

Changing the Mindset

TASK FORCE REPORT
ON THE
WORKERS' COMPENSATION SYSTEM

February 16, 2001

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Introduction

Background

Task Force Appointment

On October 27, 2000, Environment and Labour Minister Oliver Langdon launched a complete review of the Province's workers' compensation system, as required under Section 126 of the *Workplace Health, Safety and Compensation Act (the Act)*. This review was carried out by a Task Force of five members of the Board of Directors of the Workplace Health, Safety and Compensation Commission. A report for Government was requested by February 16, 2001.

J. Wayne Trask, Chairperson of the Board of the Commission, was appointed Task Force Chairperson. The other appointees were labour representatives Reg Anstey and Judy Vanta, employer representative Roger Flood and at-large representative Don Warr.

Task Force Discussion Paper

A Discussion Paper was released by the Task Force on November 22, 2000. It was designed to outline the extent and nature of the current financial problems facing the workers' compensation system, facilitate discussion and seek input from stakeholders on how to address the situation. The Discussion Paper was mailed to 76 stakeholders identified by the Task Force and an additional 70 were distributed by request. The Discussion Paper was also posted on the Commission's web site. A copy of the Discussion Paper is included as Appendix 1.

The Discussion Paper outlined the following important issues:

- ♦ the viability of the workers' compensation system in Newfoundland and Labrador is uncertain;
- ♦ assessment revenue is no longer sufficient to meet rapidly increasing costs; and
- ♦ if benefits are not curtailed, assessment rates are not significantly increased, or the number, duration and cost of injuries are not reduced substantially, then the Commission's injury fund will be eliminated within 15 years.

The Discussion Paper noted that strategies must be developed in partnership with stakeholders responding to the current financial situation and ensuring all stakeholders fully accept their responsibilities. These include preventing injuries, returning injured workers back to health and to meaningful employment, or supporting them with a fair level of benefits if they are not capable of returning to employment.

Task Force was called "in response to requests by key stakeholders and in recognition of the fact that the Commission is facing serious financial issues that require immediate attention."

Minister Langdon
October 27, 2000

Alternatives to Achieve Financial Stability

- Injury Prevention
- Disability Management
- Increase assessment revenue
- Restrict access to benefits
- Reduce benefit levels

Task Force
Discussion Paper
November 2000

"There are no simple solutions....it is critical to strike a balance between what is fair and equitable, but also what is affordable and financially sustainable."

J. Wayne Trask
Task Force Chairperson

"It is important we hear from stakeholders representing injured workers, employers, health care providers and others on what changes are necessary to put the system back on solid ground."

Task Force

Financial Situation

The Discussion Paper also described the financial situation facing the Commission. Highlights include:

- ♦ The cost of new injuries from 1993 and 1997 was between \$51 - \$56 million per year.
- ♦ By 1999, costs of new injuries had increased to \$97 million annually and are projected to increase to \$151 million annually by 2005.
- ♦ Long-term benefit liabilities have grown over a two-year period — from 1998 to 1999 — from \$188 million to \$295 million, and represent 60% of the Commission's benefit liabilities. This could reach as high as \$515.1 million by the end of 2005.
- ♦ The number of long-term disability claims in Newfoundland and Labrador is at twice the expected average for a wage-loss system and 60% higher than anticipated, based on experience to the end of 1997.
- ♦ The Commission's unfunded liability increased by \$69 million to \$180 million in 1999 and without systemic changes, is projected to be at least \$392 million by 2005.
- ♦ Newfoundland and Labrador has the highest average assessment rate in the country at \$3.24, with the next highest in Nova Scotia at \$2.54.
- ♦ It is projected that the Commission will experience a cash flow shortfall of \$9.7 million in 2001, and a \$30.1 million shortfall in 2005 if systemic change does not occur.

Public Consultation

Consultation process

From the outset, consultation with stakeholders was seen as an important element of the process. Much attention was given to allow groups and individuals ample opportunity to make representation to the Task Force. Those wishing to make representation could submit a written submission and/or participate in one of seven public meetings. Ads were run in all provincial newspapers the weeks of November 22, and December 23, 2000 to advise of the meeting dates and process for submissions. As well, notification inserts were mailed with all claimants' cheques and direct deposit slips.

Public meetings

Public meetings in five centres began on January 15, 2001 (rescheduled from January 4, 2001 in response to stakeholder requests). Individuals wishing to make a presentation at one of the meetings were requested to notify the Task Force by December 29, 2000. Groups and individuals were encouraged to forward their written submissions by January 12, 2001.

Nearly 100 in-person presentations took place in:

- ♦ Labrador City - January 15
- ♦ Corner Brook - January 16
- ♦ Gander - January 17
- ♦ Clarenville - January 17
- ♦ St. John's - January 18, 19 & 20

The demand was so great in St. John's that evening and Saturday slots were added. And in each centre, time was left for unscheduled presentations. A list of the presenters in each location is contained in Appendix 2.

Jane Helleur, from *Jane Helleur and Associates*, was hired to facilitate all public sessions and her services were invaluable in ensuring the meetings ran smoothly.

Written submissions

A total of 110 written submissions were received by the Task Force. These are listed in Appendix 3. There will be overlap between this list and the list of public presenters as many presenters supplemented their oral presentation with written submissions.

Round Table Discussion

On January 25 and 26, 2001, over 30 representatives from key stakeholder groups participated in a Round Table discussion held in St. John's. These representatives were chosen based upon their involvement and knowledge of the system. A list of participants is contained in Appendix 4.

Facilitated by Jane Helleur, this process allowed representatives of injured workers, employers, unions, health care providers and others to assess the issues facing the Task Force and attempt to achieve consensus on ways to improve and stabilize the system.

Through facilitated group exercises, participants were asked to discuss some fundamental issues affecting the workers' compensation system. On hand to assist in this process were Mike Rose, Director of Policy and Research at the Commission, and Conrad Ferguson, an independent actuarial consultant working for the Task Force.

Task Force members were very pleased with the Round Table process and many participants indicated it was an excellent and productive process.

The Task Force received comments on ways to improve and stabilize the system and used this input, together with what was obtained through written submissions and presentations, to complete this report.

The Task Force heard from all those wishing to make a presentation.

- 97 presentations
 - 110 written submissions
 - 32 stakeholder groups at the Round Table forum
-

"This is one of the best consultation processes I have ever participated in anywhere."

Peter O'Brien
**Canadian Federation of
Independent Business**

The Consultations: What We Heard

Not surprisingly, stakeholders held strong and varying views about the workers' compensation system. All stakeholders agreed that reform to the current system is needed, albeit there were differing views on how this could be achieved.

Employers want an administratively streamlined insurance system, with rates competitive with the national average and the unfunded liability eliminated over a short period of time. Injured workers and labour organizations, while recognizing the need to address a short-term cash problem, did not fully accept that the system had to be fully funded or that the current assessment rates paid by employers represented a competitive disadvantage for them. If assessment rates are too high, then it was within their ability to reduce them through less injuries at the workplaces.

There were, however, a number of common understandings and points of consensus. What we heard is a call for a fundamental change in how all of us collectively interact, participate and manage the workers' compensation system. This became abundantly clear at the Round Table. Stakeholders recognized that only by working together can the system effectively be turned around and sustained over the longer term. References to "our system" were prevalent at the Round Table.

Stakeholders agreed that the overriding objective of the system is still an insurance system that is fair, affordable and sustainable. There appears to be unanimous support for its original underlying principles (i.e., security of payment, no fault, collective liability, independent administrator and no suing of employers).

Stakeholders made it clear they did not want quick fix solutions, such as increasing rates or lowering benefits. In fact, there seems to be majority consensus that assessment rates should not be increased or benefits reduced below 80%.

What was deemed critical to the future success and sustainability of the system is a fundamental **change in the mindset** of everyone associated with the system; workers, employers, health care providers, unions, and, indeed, the Commission itself. There is now a realization that it's OUR system (employers, workers and the Commission). It's not just the Commission's system. It's all of ours to make or break!

All agreed that an overriding objective of the system is to ensure that injured workers are returned to work as safely and quickly as possible. For everyone, the first line of attack in addressing the system's financial woes was to prevent injuries from happening in the first place...**prevention, prevention, prevention...**

Report Format

The Task Force has attempted to outline all major issues in this report. It has not attempted to respond to every item raised during the consultation process, but to deal primarily with those changes that impact its overall proposal. Several issues are also of a policy nature which the Board of Directors of the Commission has the authority to address later.

The report is divided into ten sections. A Framework for the Future and a Summary of Recommendations follow at the end. The discussion of items under each section highlights, in summary form, the information presented to the Task Force (what we heard), followed by the Task Force assessment and specific recommendations.

For simplicity, and due to the fundamental nature of the system, stakeholder opinions are grouped into two categories, namely worker views and employer views. In no way are these categorizations meant to indicate or suggest that all employers or all workers share the same views on issues....clearly they do not. This is merely a means for the Task Force to effectively report majority stakeholder opinions.

For purposes of this report, issues have been divided into the following categories:

- Prevention
- Early and Safe Return-to-Work
- Health Care Provider Accountability
- Assessments
- Entitlement
- Benefits
- Appeals Process
- Administration
- Enforcement
- Role of Government
- Framework for the Future
- Recommendations

"We've tried increasing employers' assessments and decreasing injured workers benefits, so now it's time to start preventing injuries."

Ron Jesso
Corner Brook

"NEIA supports the creation of a provincial strategy focussing on prevention..."

Newfoundland
Environmental Industries
Association

"The role of OH&S committees needs to be more clearly defined and an appropriate mechanism needs to be put in place to ensure that committees are established and functioning properly."

Newfoundland and
Labrador Federation of
Labour

Prevention

Almost without exception, all stakeholders made it clear that the only meaningful way to address our short and long-term financial problems is through a much more serious and coordinated effort on prevention. Not only is it financially prudent to do, it's the right thing to do!

The following discussion and directions recommended by the Task Force are intended to achieve this objective.

Provincial Accident Prevention Strategy

What We Heard

Given the priority that all stakeholders place on accident prevention, there was consensus that a provincial accident prevention strategy be formulated on a priority basis, led by the Commission with the full involvement of key stakeholders.

Task Force Assessment

The Task Force fully endorses this proposal and recommends that the Commission aggressively pursue it over the coming months.

Occupational Health and Safety Committees/Worker Representatives

What We Heard

Many comments on the inadequacy of workplace prevention activities were voiced during the consultation process. Serious questions were raised about on-the-job training for workers and young workers in particular. On this latter point, concern was noted about the lack of health and safety training in our school system, particularly at the high school and post-secondary levels. Further concern was expressed about the lack of effectiveness of workplace health and safety committees and worker representatives.

Task Force Assessment

The Task Force shares these concerns. It believes that the general duty provisions of the *Occupational Health and Safety Act*, which delineate the responsibilities of both employers and workers, is legislatively sufficient, however, greater awareness of these legislative responsibilities is required.

The current *Occupational Health and Safety Act* is founded on the principle of the "internal responsibility system," and requires that all workplaces with 10 or more employees have joint (management-employee) occupational health and safety committees. A requirement to meet at least quarterly is also stipulated in legislation. The Task Force recognizes the important role of

these workplace committees and is concerned that many are not functioning very effectively or worse, not at all. Equally at issue is the fact that workplaces with less than 10 employees have only a discretionary requirement to appoint a safety representative.

The Task Force highly recommends that far greater attention and priority needs to be paid to occupational health and safety committees and worker representatives. This is necessary if prevention at the workplace is to achieve maximum success. The Task Force is of the view that better monitoring and support for these activities by the Commission and the Department of Environment and Labour is required. It is up to the Department of Environment and Labour to ensure that these committees meet as legislatively required and to intervene accordingly if they are not. The Commission, on the other hand, must ensure that these committees have sufficient training to do the job required and that the meetings held by these committees are effective.

The Task Force further believes that training be mandatory for all committee members in companies with 50 or more employees. For smaller companies (10-49 employees), mandatory training for the co-chairs of the committee is sufficient. As all companies should have designated safety representation, the Task Force believes that worker representatives be required for all companies with less than 10 employees, with training for that individual. In all cases, paid training leave must be available.

In smaller companies with designated worker representatives, the Task Force strongly encourages (but not mandates) management employees to be trained as well. Further, while the Task Force does not deem it appropriate for employers to be bound by the recommendations of the health and safety committees or worker representatives, it nonetheless feels there be a legislated obligation for employers to report back in a timely manner on the actions to be taken on their recommendations.

Safety Training

What We Heard

A common theme throughout the deliberations was the need for worker and employer assistance in the development of worker safety training. Employers and workers expressed the need for the Commission to take a leadership training role to ensure the development and implementation of effective occupational health and safety and disability management programs. There were also calls for a training strategy and mentoring program for small business.

"...develop a set of guidelines that will provide assistance to employees in how to develop a worker safety training program, inform employers on where to seek assistance, educate employers on what to look for and outline standards of evaluation."

**Minister's Advisory Council
on Occupational Health
and Safety**

Task Force Assessment

In 1996, an Issues Working Group on Worker Safety Training determined that little was being done to ensure that the training offered by employers and external providers was of the standard to ensure workers receive all the information and instruction necessary to perform their jobs in a healthy and safe manner. Unfortunately, this still appears to hold true today.

With the proposal for mandatory training for occupational health and safety committees and worker representatives in all workplaces, the Task Force believes that the role of the Commission in worker safety training and training provider accreditation needs to be addressed.

Under the *Workplace Health, Safety and Compensation Act*, the Commission is responsible for: developing standards for certification of persons required to be certified under the *Occupational Health and Safety Act*; approving training programs for certification; and certifying persons who meet the standards. Currently, these include, first aid, asbestos abatement, blaster certification and power line hazards.

To ensure that employers and workers build effective health and safety programs, the Task Force believes that the Commission has to strengthen the standards for workplace health and safety training and of training providers. An appropriate place to start would be to develop a strategic training program, with priority on training protocols for occupational health and safety committees and worker representatives over the next couple of months. This would include the law, roles and responsibilities, hazard recognition/evaluation/control, investigations and workplace inspections.

Standards for training providers need to be developed as well. Ideally, external providers who meet established criteria would be recognized by the Commission to provide quality workplace health and safety training.

High School and Post-Secondary Curricula

What We Heard

Serious concerns were expressed by both workers and employers about the lack of occupational health and safety content in school (especially high school) and post-secondary curricula. Upon graduation many students enter the workforce without the proper awareness of their basic rights and responsibilities in health and safety. Ignorance oftentimes leads to accidents. Stakeholders are very concerned that the current health and safety course (Workplace Safety 3220), which is offered as an elective in high school, is at risk of being dropped in the next school year. Employers and workers oppose any such move and want to see this course, with the necessary adjustments, enshrined as part of the mandatory high school core curriculum.

"The WHSCC continue their support of Workplace Safety 3220 and lobby the Minister of Education to implement this course as a provincial program to educate the future workforce, employers and employees, about the importance of injury prevention and occupational health and safety in the workplace."

**Newfoundland and Labrador
Employers' Council**

Task Force Assessment

The Task Force endorses the consensual view of stakeholders on this matter. It notes that for the five year period 1996-2000, nearly 8000 claims were processed by the Commission for workers in the 15-24 age group. The Task Force urges the Minister of Education to review this matter on a priority basis. Further, the Task Force suggests that the Minister of Education embark immediately upon consultations with public and private post-secondary institutions and other relevant stakeholders to make health and safety education a mandatory part of every post-secondary program.

Education and Awareness

What We Heard

A lot of emphasis was placed on the need for more education and awareness on the roles and responsibilities of all stakeholders in the workers' compensation system. Many employers admitted to not knowing what the "system" was really all about, aside from paying annual assessment premiums. Many workers, on the other hand, felt that the system should take care of far more of their needs than the current system is designed for. The medical community suggested that often they are not sure of the role they are expected to serve in the workers' compensation system.

Task Force Assessment

The Task Force agrees that all stakeholders need a clearer understanding of their roles in the system. While improved "global" education is required, much stronger emphasis needs to be placed on the specific needs of each target group (i.e., workers, injured workers, employers, health care providers and their affiliate associations) through the development of workshops and the like. A forum for communication between stakeholders is critical too. The Task Force welcomes the recommendation of the Newfoundland and Labrador Medical Association to establish a forum with health care professionals involved with the treatment and rehabilitation of injured workers. The Task Force is also pleased to note the discussions now ongoing with Memorial University's Faculty of Medicine and the Commission regarding occupational medicine training for medical doctors.

The Task Force agrees with the FFAW that the establishment of sectoral committees in key industries can go a long way in improving communication and ensuring appropriate attention is given and action taken to address issues of a sector-specific nature. These committees would comprise senior representation from workers and employers, along with the Commission and the Department of Environment and Labour. The committees would be advisory to the Commission and address provincial, sectoral issues, as opposed to employer-specific ones. The Commission would serve as facilitator and

"The Commission should undertake a public awareness campaign to educate the public on funding sources and limitations, and the negative impact of high assessments on provincial business."

Abitibi-Consolidated Inc.

"Industry-based occupational health and safety committees should be established so strategies for safe, healthier workplaces can be more targeted."

**Fish, Food and Allied
Workers Union**

"Ergonomic assessments of workplaces should and must be carried out so that improvements can be made to prevent injuries. Ergonomic regulations must be developed and enforced in Newfoundland and Labrador."

**United Steelworkers of
America District 6**

develop guidelines for the general operations of the committees. Ultimately, the success or failure of these committees will depend on the commitment of the sectoral parties.

A good example of how this concept was applied successfully is the current initiative underway to deal with crab asthma. Once the seriousness of this issue was raised, the Fish, Food and Allied Workers Union (FFAW), Fisheries Association of Newfoundland and Labrador (FANL), the Commission and the Department of Environment and Labour joined together to develop and implement a well-coordinated action plan to deal with the issue on a priority basis.

An issue that could be reviewed under a sectoral committee structure is mandatory Certificate of Recognition (COR) training for all workers in the construction industry as suggested by the Newfoundland and Labrador Construction Safety Association. Early and safe return-to-work strategies in the fishing sector, as discussed later in this report, could be a candidate topic for that particular sectoral committee. The Task Force would like to see several of these committees established in key sectors within six months.

Ergonomics

What We Heard

Soft tissue injuries account for approximately two-thirds of all workplace injuries. The associated costs are staggering as is the pain and suffering caused by such injuries. These injuries cross all sectors, from heavy industry and manufacturing to health care and office work.

Several years ago, a stakeholder working group was established to review ergonomics issues in this province. This group suggested that the only meaningful way to address soft tissue injuries would be through ergonomic regulations, coupled with an aggressive education campaign. This was and still remains the approach adopted by British Columbia (the only Province that regulates in this area). These recommendations were echoed again to the Task Force by the labour movement. Those employers commenting on this issue, by and large, thought that educational initiatives, including workplace guidelines developed by the Commission, would be sufficient to bring awareness to this issue and result in the desired corrective action.

Task Force Assessment

The Task Force notes that little has transpired to deal with this issue over the last few years. Given the gravity of the situation in terms of numbers and severity of these injuries, it feels more decisive action is now needed, and supports the British Columbia approach to regulations in particular. The British Columbia regulations (attached as Appendix 5) serve to heighten the obligations of employers to deal with these workplace issues in a serious way without being overly prescriptive.

Coordination Between the Commission and Department of Environment and Labour

What We Heard

As a result of the 1998 reorganization, health and safety education and accident prevention is now the responsibility of the Commission, with enforcement remaining with the Department of Environment and Labour. This move was intended to recognize the relationship of accident prevention and compensation.

Many groups commented on the lack of coordination and effectiveness of the current arrangement between the Commission and the Department. Some suggested that all aspects of education, prevention and compensation should be under one umbrella, while others called for more determined efforts to make the current arrangement more efficient and effective.

Task Force Assessment

The Task Force notes that both models exist across the country. The Task Force believes the current arrangement can work much better and agrees that more determined efforts should be taken to achieve this.

Task Force Recommendations on Prevention

- ♦ That a provincial accident prevention strategy be developed on a priority basis, led by the Commission with the involvement of all key stakeholders.
- ♦ That the Department of Environment and Labour aggressively enforce the provisions of the *Occupational Health and Safety Act* pertaining to health and safety committees.
- ♦ That, effective January 1, 2002, training be mandatory for all health and safety committee members in companies with 50 or more employees. For smaller companies (10-49 employees), training for the co-chairs of the committee be mandatory.
- ♦ That, effective January 1, 2002, worker representatives be mandatory for all companies with less than 10 employees, and that training be mandatory for these individuals.
- ♦ That the Commission monitor health and safety committees and worker representatives to ensure that they have undertaken the legislated training and the meetings held are effective.
- ♦ That legislation be amended to ensure paid leave is available for persons participating in the above-referenced committee and worker representative training.

"The Occupational Health and Safety Division and Health and Safety Services must work together to establish very clearly defined roles and responsibilities for each division and communicate this information to all stakeholders."

**Newfoundland and Labrador
Employers' Council**

- ♦ That for smaller companies, management employees seriously consider taking health and safety training as well.
- ♦ That employers be legislated to report back in a timely manner on the actions to be taken on the recommendations made by the health and safety committees or worker representatives.
- ♦ That the Commission strengthen the standards for workplace health and safety training by developing a strategic training program and a process for the setting of standards for training providers. Immediate priority be given to the development of a training protocol for occupational health and safety committees and worker representatives.
- ♦ That the Minister of Education ensure that an appropriate course in occupational health and safety, along the lines of Workplace Safety 3220, be part of the core high school curriculum, commencing the Fall of 2001.
- ♦ That the Minister of Education embark immediately upon consultations with public and private post-secondary institutions and other relevant stakeholders with the objective of having health and safety education a mandatory part of every post-secondary program.
- ♦ That the Commission aggressively launch both global and targeted education and awareness initiatives to ensure all stakeholders (i.e., workers, employers, unions, health care providers) fully understand their respective roles and responsibilities under both the *Occupational Health and Safety Act* and the *Workplace Health, Safety and Compensation Act* (including its administrative processes).
- ♦ That the Commission and the relevant stakeholders pursue the establishment of sectoral committees, with a view to having several functioning within six months.
- ♦ That new Ergonomics Regulations under the *Occupational Health and Safety Act* be developed along the lines of those in British Columbia.
- ♦ That the Commission and the Department of Environment and Labour ensure better delineation and coordination of their respective mandates and associated activities.

Early and Safe Return-to-Work

What We Heard

Throughout the Task Force hearings, reference was made to the urgent need to provide better accommodation for workers injured on the job. Despite the differing views on how this should be accomplished, a common theme emerged — that once an injury occurs, early intervention is critically important and early and safe return-to-work must be the primary objective.

All groups recognized the importance that early and safe return-to-work and workplace accommodation strategies must play in the workers' compensation system as we move forward. Key to this is the appropriate support and rehabilitation that must be provided to injured workers. There seems to be general agreement that the current reliance on vocational rehabilitation and deeming has failed the needs of injured workers and employers.

Everyone agrees that attachment to the workplace is critical and that only through improved and fully cooperative efforts and better communications between employers, injured workers, co-workers, unions, health care providers and the Commission will we achieve our collective goal of a fair, affordable and sustainable system over the long-term. Improved return-to-work and accommodation programs, combined with effective rehabilitation services, should decrease the necessity to deem workers and reduce the number of workers placed on long-term disability.

While stakeholders generally agreed that employers have an important role to play in successful return-to-work strategies, there were mixed views regarding the degree to which employers should be compelled to fulfill these obligations and responsibilities.

Most workers, and a few employers, want a legislative provision in place to create mandatory re-employment obligations for employers. The prevailing view among workers is that many employers wish to have little or no contact with injured workers, at least not until the injured worker is able to return to work without restrictions.

Most employers feel it is unnecessary to place a re-employment obligations in the Act. They point to their existing responsibilities under federal Human Rights legislation and suggest that educating employers is the best solution for achieving better return-to-work results. They indicate that lack of understanding and awareness among employers, rather than the absence of legislative authority, is the main problem. Legislation, they argue, will create administrative problems, increase legal challenges and costs, and limit the necessary flexibility that employers and injured workers need to make such programs work. Also, small and medium-sized businesses, and seasonal ones, may not have the ability to re-employ all workers.

"The Commission should engage in a campaign to educate employers on the importance of having employees return to work in as timely a manner as possible. The campaign should also educate them on the steps that they can take, such as working with health care professionals and the employees, to ensure this happens."

St. John's Board of Trade

"Employers need to understand that they have to take responsibility in allowing injured workers back in the workforce as soon as possible."

Exploits Regional Chamber of Commerce

"NAPE believes the employer's 'duty to accommodate' should be a legislated requirement for employers who regularly employ twenty or more employees."

Newfoundland and Labrador Association of Public and Private Employees

"A legislative requirement would impose possible tremendous additional costs on the firm — especially those with less than thirty employees."

**Canadian Manufacturers
and Exporters**

"The Commission has no choice but to have duty to accommodate legislated at its earliest convenience to ensure that this system will survive."

**Austin Haynes
St. John's**

"Duty to accommodate provisions should only be introduced after a thorough examination of the experiences of those provinces that have already introduced such legislation."

**Newfoundland and Labrador
Nurses' Union**

Task Force Assessment

The Task Force notes that aside from wage-loss benefits, the Commission invests approximately \$30 million annually on health care and another \$15 million on vocational rehabilitation, mostly aimed at returning injured workers to the workforce. Despite this investment, more workers than ever are ending up on the system for longer periods of time or are being faced with the prospects of being "deemed." Workers are often caught offguard or left frustrated by deeming decisions, or get discouraged by vocational and medical programs that drag on and do little to improve their employment prospects.

The Task Force is greatly encouraged by the level of recognition by stakeholders of the necessity for, and benefits to be derived from, effective return-to-work and accommodation programs. The Task Force heard several stories about successful return-to-work and accommodation programs in workplaces in the province. In this regard, the Task Force notes that the successful employers, it appears, draw upon the Commission for support rather than for the lead.

In the Task Force's view, failure to take return-to-work responsibilities seriously spells trouble for employers, injured workers, the Commission and the overall financial sustainability of the system. Too often injured workers who are physically capable of working are not accommodated back into the workforce and have been subjected to the difficult, but necessary, deeming process. This is unacceptable. The Task Force agrees that the Commission must re-examine its approach to case management, vocational rehabilitation, and communications with injured workers and affected employers.

It is difficult to consider the depth of these issues and not come to the realization that there is a need for a dramatic change in mindset. Bearing this in mind, the Task Force looked to other jurisdictions and found that several have legislated re-employment obligations/duty-to-accommodate provisions. Ontario goes further by promoting early intervention and safe return-to-work (i.e., duty-to-cooperate). Ontario's adoption of an early intervention and safe return-to-work model, combined with the re-employment legislative obligations introduced in 1990, was one of several initiatives implemented to reform that system in 1998. The early intervention and safe return-to-work model they employ recognizes that the responsibility for returning injured workers to the workplace lies in the hands of those to whom getting back to work matters the most — workers and their employers.

The Task Force does not think that education alone will address this issue. Borrowing from Ontario, the Task Force recommends that a similar legislative approach be adopted for this province. Key features of legislation should be developed along the following framework:

- ♦ promotion of workplace self-reliance in return-to-work issues;
- ♦ identification of specific roles and responsibilities for employers, injured workers, and the Commission in the duty-to-cooperate model;
- ♦ provision of mediation intervention by the Commission where cooperative efforts by the workplace parties fail;
- ♦ requirement for re-employment/duty-to-accommodate obligations for larger employers (i.e., 20 or more regular employees);
- ♦ stiff penalties and fines for employers and workers who fail to cooperate, and for employers who fail to uphold their re-employment obligations; and
- ♦ enhanced and properly focussed labour market re-entry planning and rehabilitation support for injured workers who cannot be immediately or effectively accommodated in the workforce.

More details of the Task Force proposal are attached as Appendix 6.

Deeming

The significance of the above approach, in the Task Force's view, is that it will reduce the duration and number of long-term disability claims. There should also be less of a requirement for the Commission to "deem" workers than is now the case as more workers are accommodated or provided with rehabilitation support to maximize alternate employment opportunities.

Through the strengthened process of labour market re-entry planning, the Commission will help injured workers better understand up-front, early in the process, their roles, the options available and finally, the level of entitlement they can ultimately expect. Uncertainty surrounding these issues is a current weakness in the system.

Deeming will not be eliminated. However, the development of better tools and data sources in the labour market re-entry assessment and planning phase should make decision-making more consistent, objective and transparent. Ontario uses the National Occupation Classification system and income data from such sources as Statistics Canada to determine appropriate employment and earnings capacity levels. Use of similar sources by the Commission may lend more credibility to the deeming process here.

Task Force Recommendation on Early and Safe Return-to-Work

- ♦ That the *Workplace Health, Safety and Compensation Act* be amended to introduce a new mandatory, cooperative return-to-work model as described in Appendix 6 of this report.

"Accountability and outcome measurements must be a priority... Health care providers must be educated on the cost of the system and the need to decide diligently to ensure appropriate use of limited resources."

**Canadian Association of
Petroleum Producers**

Health Care Provider Accountability

What We Heard

Many presentations commented on the important role played by the medical community in the system. Questions were raised about timely access to health care providers and how delays in access only served to undermine timely medical recovery and early return-to-work. Some questioned the cost and value of some of the prescribed medical treatments and rehabilitation programs. Others wanted to know why certain non-traditional medical practitioners, such as acupuncturists and massage therapists, are not recognized even though injured workers and others feel they are helpful.

Task Force Assessment

Utilization and cost of health care services have risen significantly in recent years. Despite the expansion and investment in various forms of treatments and therapies, claim duration and program costs continue to increase.

The Task Force shares the view that there needs to be increased accountability on the part of all health care providers. To better meet injured workers' needs and to ensure fiscal responsibility and accountability, a number of initiatives must be implemented in partnership with appropriate health care providers. Critical will be the implementation of strategies to: (a) maximize the quality of health care for injured workers; (b) ensure that the health care provided reflects the best clinical evidence and follows best practice guidelines where available and appropriate; and, (c) ensure health care services are fairly priced for the appropriate and timely treatment of injured workers.

To this end, the Task Force is pleased to see, and endorses the health care strategies the Commission has been pursuing in partnership with health care providers. Specific initiatives underway with the Newfoundland and Labrador Medical Association include physician education, particularly the physician's role in the return-to-work process, and implementation of appropriate medical disability guidelines to assist physicians in the management of certain types of injuries. Other initiatives include pursuing an improved prescription drug management program, maximizing tendering contracts for various medical aid products and services, and establishing service standards and accreditation (clinical practice expectations, outcome measures and business relationship expectations) with physiotherapists, occupational therapists and chiropractors.

The Task Force is sympathetic to the position of unregulated medical practitioners who seek recognition by the Commission. However, it also recognizes the need for access to a provincial accreditation body upon which it can rely for advice in ensuring appropriate treatment guidelines

are being followed for those injured workers utilizing these types of services. Accreditation of such professionals falls within the purview of the Department of Health and Community Services to address. Further dialogue between these practitioners, the Department of Health and Community Services and the Commission is warranted before major changes in this area of policy are implemented.

Task Force Recommendations on Health Care Provider Accountability

- ♦ That the Commission pursue all appropriate measures to increase the accountability of health care providers in ensuring the appropriateness and timeliness of medical services provided to injured workers.
- ♦ That the Commission embark upon further dialogue with the Department of Health and Community Services and groups such as acupuncturists and message therapists to explore ways and means by which such professions can be recognized by the Commission for health care purposes when appropriate.

"Due to the financial burden placed on employers, assessment rates should not be increased."

Newfoundland Power

"A thorough review of the present Classification of Industries & Assessment Rates structure be conducted with emphasis on developing a structure which reflects the true risks associated with each occupation defined in the employer rate groupings."

**Newfoundland and
Labrador Teachers'
Association**

Assessments

There was general consensus among employers and workers that the average assessment rate, currently \$3.24 per \$100 of payroll and the highest in the country, should not be increased. There were also strong views that costs are not being fairly distributed amongst all employers, with some employers paying more than they should, with others paying less. All employers felt that the rate setting system should be more responsive to their actual injury costs, and that recognition should be given by way of a reduction in assessments paid for effective workplace health and safety and return-to-work programs.

Rate Setting Model

What We Heard

Many employer representatives indicate that the current rate setting model should be revised to ensure greater equity among employers in the base rate they are charged. They also feel that 84 rate groups are excessive and often lead to the situation where one or two large employers with poor safety records in the same rate code skew the entire assessment average to the disadvantage of other companies with good safety records. Several employers also question the credibility of the group in which they are placed, wondering why their assessment rates have continually increased while their accident costs have declined. Employers suggested that it is time to review the current rate setting model to more fairly assign costs to employers with persistently high injury costs.

Task Force Assessment

The Task Force agrees that perhaps there are too many rate codes and there should be more equitable cost distribution across and within rate groups. Further, the Task Force notes the importance of having a responsive rate setting system where employers can be rewarded for positive safety records through reduced assessment rates. The concept of a minimum rate (say \$1.00 per \$100 of payroll) is worth exploring further as well. It is also important that this review be conducted quickly, before the 2002 rates are set.

Other provinces, including Nova Scotia and New Brunswick, have overhauled their rate group structures within the last few years for the same reasons. These provinces realized base rate changes for some groups in the 500%-50% (plus/minus) range. It would not be surprising to see the same results here. Depending on the magnitude of the rate increases, the new model may have to be phased-in for some of the new, revised rate codes.

Incentive/Disincentive Programs

What We Heard

There were divergent views between workers and employers on the role financial incentive programs for employers should play in the workers' compensation system. Some questioned the value of incentive programs like the "WorkSafe" Program, and the credits given under the Experience Rating System. Employers should not be rewarded for making their workplace safe, a legal obligation they are already required to meet. Workers say employers are financially rewarded with lower injury costs and improved bottom lines when they implement effective safety programs.

Employers who are proactive and invest in health and safety programs feel the system should recognize their efforts. Many suggest expansion of the current "WorkSafe" program to reach more employers (they would like to see some of the program elements streamlined too). They strongly feel that the current incentive/disincentive scheme devised under the Experience Rating System (i.e., a 20% incentive for employers demonstrating above-average safety performance in a rate code balanced off by a 20% disincentive for poor performing employers in the same rate code) provides insufficient deterrent for employers with poor safety records.

Task Force Assessment

The Task Force is of the view that there is a place for incentive and disincentive strategies in the system. While recognizing employers have a fundamental responsibility to ensure safe workplaces, the Task Force believes that appropriate incentives can further encourage this mindset. Several Provinces employ incentives to effect positive workplace change.

Under the Commission's "Experience Rating Program," the maximum surcharge and discount is 20%. There are other jurisdictions whose maximum surcharges are as high as 80% and whose maximum discounts are as high as 40%.

Based on a high degree of stakeholder consensus, particularly demonstrated at the Round Table, the Task Force feels it is time to institute higher surcharges under the Experience Rating System. For the time being, it suggests that the current 20% discount rate remain. Beginning January 1, 2002, a 40% maximum surcharge should be implemented, with consideration given to further increasing this level once the impact of the new rate setting model on employers is better known. It is not intended that the proposed change in the experience rating system be necessarily revenue neutral.

"Experience rating can offer employers an incentive to take a proactive role in health and safety management that can lead to innovation in health and safety programs, improved education and reduction in workplace hazards."

**Newfoundland and
Labrador Health Boards
Association**

"Increasing discount percentages for firms with lower claims costs will provide a greater incentive for injury prevention. Conversely, increasing surcharge percentages for firms that incur greater claims costs will also provide a greater incentive for injury prevention."

**Newfoundland and Labrador
Construction Safety
Association**

"...that the WHSCC initiate a pilot project in conjunction with the Canada Customs and Revenue Agency (CCRA) to see if such an approach would be beneficial for employers as well as for the Commission."

**Canadian Federation of
Independent Business**

"Workers' Compensation must ensure all employers benefiting from a Collective Liability System pay their fair share of the costs."

**Building and Construction
Trades Council
Petroleum Development
Association**

Monthly Payroll Reporting

What We Heard

Some employers, particularly small and seasonal businesses, are seeking support to pay their assessments on a monthly basis as opposed to annually by April 1st. They indicate that paying an annual lump sum poses a financial hardship for them, especially if their business is seasonal. Several employers point to other jurisdictions which show greater flexibility on this matter. Others point to the Nova Scotia model where, through the Canada Customs and Revenue Agency, a monthly, one-stop payment scheme is in effect for all employer deductions.

Task Force Assessment

Implementation of a monthly payment system will cost the Commission approximately \$1.4 million in lost interest revenue annually. The Task Force is also aware that implementation costs in Nova Scotia were approximately \$5 million. These facts notwithstanding, the Task Force understands the flexibility such a system would have for many employers. Monthly reporting warrants further review on a revenue neutral basis, recognizing that the monthly payments will have to be higher to offset lost interest earnings.

Self-Insurers/Exempt Workers

What We Heard

Virtually all employers appearing before the Task Force expressed concern that self-insured employers are not contributing their fair share of costs to the workers' compensation system when compared with other employers. They suggest it must be critically evaluated to ensure self-insured employers are paying for all of the services they receive from the Commission and are covering all of their liabilities. In principle, both workers and employers feel no employer should be permitted to opt out of the collective liability system.

Equally, it has been suggested by some groups that all employees in the province should have workers' compensation coverage. A case in point is self-employed home care workers. Despite an announcement by the Provincial Government of \$1 million in workers' compensation funding for these workers in 1997, they are still not covered.

Task Force Assessment

The Task Force firmly believes each and every employer must contribute fairly to the maintenance of the system. While self-insured employers are individually liable for their own injury costs, they are charged a fee to cover the Commission's cost of administering their claims. The vast majority of provinces permit self-insurers.

Permitting employers to self-insure potentially increases the risk for those employers who remain in the collective liability pool. Where self-insurance is allowed, therefore, great care must be taken to ensure self-insurers pay the full costs of administering their claims. Before automatically recommending that the class of self-insurers be eliminated, the Task Force suggests that further detailed actuarial analysis on this proposal be conducted. After all, with the increased assessment revenue associated with adding self-insurers to the system also comes all of their current and potential future liabilities.

The Task Force is aware that some discussions have taken place between the Departments of Environment and Labour and Health and Community Services on the question of workers' compensation coverage for home support workers. The Task Force feels it is appropriate for Government to bring closure to this issue once and for all.

Assessing Special, Limited-Life Projects

What We Heard

Concerns were expressed by some employers and workers that the assessment model may not adequately gauge the level of risk and amount of assessment revenue required to cover the potentially high claims costs of large, limited-life projects. The construction project at Bull Arm in the early 1990s was noted as an example where assessment revenue may have been significantly short in covering the claims now on the workers' compensation system from that project. The primary concern is that the remaining employers in the construction industry are forced to cover this deficit for years by paying increased assessments.

Consistent with the philosophy that all employers must pay their way under the system, the Task Force has been called upon to ensure all potential liabilities associated with future large limited-life projects are properly analysed and assessed accordingly. Some of the suggestions included: (a) charging above-average assessment rates over the life of a project; (b) requiring a letter of credit or bond in an amount equal to the long-term financial risk associated with a project which would cover the years following the project (say 5 years); and (c) applying a special experience rating arrangement such as applied to the Prince Edward Island Fixed Link Project.

Task Force Assessment

The Task Force agrees completely with the views expressed on this issue. Furthermore, to ensure that the Commission has full flexibility to apply whatever method of assessment it deems appropriate to minimize any financial risk to the system associated with limited-life projects, the Task Force feels it may be appropriate to state such intentions clearly in legislation.

"That all future special construction projects be pre-funded so that assessment levels for employers in the general construction industry will not be affected by the accident and workers' compensation claims experience of special projects."
**Newfoundland and Labrador
Construction Association**

Disaster Reserve Fund

Pursuant to Section 116(1)(c) of the *Workplace Health, Safety and Compensation Act*, the Commission is required to set aside a reserve to be used to meet the loss arising from a disaster or other circumstances which, in the opinion of the Commission, would unfairly burden employers in a class. The current amount of this fund is \$10 million.

This matter was not discussed during the consultations. This notwithstanding, the Task Force suggests that the allowance for this reserve be removed. It hardly seems worthwhile to set aside such a sum when assets are not sufficient to cover current claims.

Task Force Recommendations on Assessments

- ♦ That the Commission proceed immediately to revise the assessment rate classification system and implement the changes effective January 1, 2002.
- ♦ That the Experience Rating System be amended to include surcharges of 40% beginning January 1, 2002, with the current discount of 20% to remain.
- ♦ That the Commission investigate further the appropriateness of implementing a monthly payroll reporting system on a revenue neutral basis.
- ♦ That the Commission conduct a detailed actuarial review of all self-insured employers with a view to pursuing that action which ultimately is in the financial best interest of the overall workers' compensation system.
- ♦ That the Commission ensure the total administration fee for self-insured employers is sufficient to cover all relevant expenditures incurred in association with said claims.
- ♦ That the Department of Environment and Labour consult with the Department of Health and Community Services and the Commission with a view to bringing closure to the question of eligibility of self-employed home support workers for workers' compensation coverage.
- ♦ That the Commission immediately examine any and all existing limited-life projects to ensure that assessment revenue is sufficient to cover their project-related claims.
- ♦ That the Commission, in consultation with the Department of Justice, review the current legislation to ensure that the Commission has full flexibility to apply any assessment model it deems appropriate to minimize any financial risk associated with limited-life projects, with legislative amendments to be made as deemed appropriate.
- ♦ That the current allowance for a disaster fund reserve be removed, with the need for such a fund to be left to the discretion of the Commission.

Entitlement

Defining the intended scope of coverage under the workers' compensation system is as necessary as it is complex. The complexities of the modern environment — aging, multi-causal ailments, technologies at home, work and play, and new medical theories and treatment alternatives — demand that the workers' compensation system have clear coverage boundaries. The challenge before stakeholders and this Task Force is to examine coverage alternatives and define the necessary limits in order to preserve the system.

What We Heard

Many groups offered thoughts about whether the system was acceptable as is or whether it was straying away somewhat from the original insurance principles. Worker representatives believe the parameters of the system are either functioning well or are possibly too restrictive. Workers do not agree that the rules of entitlement need to be tightened. Employers, on the other hand, strongly feel that compensation should only be allowed for injuries and illnesses that show a clear and direct relationship to work. Further, they believe the work injury must be the predominant cause of disability for there to be any entitlement to benefits.

Task Force Assessment

The Task Force believes that for the system to be sustainable, compensation must only be provided for disability caused by the work injury. This is the only way to protect benefit levels for current and future injured workers and their dependents, and to stabilize assessment rates for the benefit of employers, their employees and the general public.

Benefit of Doubt

What We Heard

Employer representatives indicate that the benefit of doubt provision should be amended to promote a more balanced and fair approach to decision-making. Most employers recommend adoption of the "preponderance of evidence" test to establish a high degree of certainty before a claim is accepted or denied.

Several worker representatives felt there is no need to change the Act or its current interpretations. They believe the present wording, which ensures that "any" doubt on a claim is resolved in favour of the worker, is appropriate. Other worker representatives support the principle that where the evidence regarding a claim is relatively equal (50%/50%), only then should the benefit of doubt go to the worker.

"Section 60(1) of the Act should be rewritten to cause the decision to accept or deny a claim to be made on the balance of evidence following a consideration of all the factors which could have contributed to the worker's condition."

**Iron Ore Company
of Canada**

"The legislation must clearly define eligibility in terms of an injury arising out of the workplace as opposed to an injury that manifests itself in the workplace.

The Act must also clearly exclude conditions that are multi-casual or subjective in nature such as chronic stress, chronic pain...."

**Canadian Restaurant and
Foodservices Association**

Task Force Assessment

The Task Force does not agree that the higher standard of proof inferred by the phrase "preponderance of evidence" is necessary. It does, however, agree proper weighing of the evidence, followed by application of a fifty-fifty standard, is appropriate. Its implementation will thus eliminate the acceptance of claims based on the mere existence of "some" evidence. The current wording of the legislation (Section 60) does not adequately reflect this intent and must be so amended.

Definition of Injury

What We Heard

Many employers indicate that the definition of injury should be changed to ensure that the system covers disabilities caused by the work injury only. While claims may be accepted with pre-existing, non-compensable conditions present, employers indicate that benefits often continue indefinitely even though the primary cause of disability is not the work injury. Employers feel compensation should not be payable if a non-compensable condition is the predominant cause of disability.

Worker representatives generally believe the definition of injury is fine as the system is designed to compensate for all consequences of a work injury and that any restriction of entitlement in this regard would be detrimental to the interests of injured workers.

Task Force Assessment

The Task Force does not believe that "injury," as defined in the Act requires much change. However, the Task Force concludes that entitlement to compensation must be provided on the basis of disability or impairment caused by the work injury. In other words, the system must not cover disability or impairment caused by non-work factors. The Task Force feels that concrete steps toward stabilizing the system can be achieved by implementing the following measures (without jeopardizing benefits and entitlements of those suffering the direct consequences of a work injury):

(i) Pre-existing Conditions and Apportionment of Benefits

Other Canadian jurisdictions, such as Nova Scotia, New Brunswick and Prince Edward Island, have specific legislation on the extent of entitlement where pre-existing, non-compensable conditions contribute to a worker's disability or impairment. This Province's legislation is less clear.

The Task Force believes the intent of the legislation was in fact to limit coverage to direct work-related injuries only, separate from any pre-existing conditions. The legislation needs to reflect this intention more definitively.

(ii) Entitlement for Disabilities with Multiple Causes

Increasingly, the system is being asked to cover conditions for which there are multiple causes. Conditions such as chronic pain, psychological conditions (e.g., stress), fibromyalgia, strains and sprains are noteworthy because their causes are often multifactorial, typically involving pre-existing and potentially non-compensable issues. Occupational disease is an emerging area which will no doubt demand focussed attention in the years ahead.

In the case of chronic pain, for example, there is currently no consensus across Canadian jurisdictions on if, or how, chronic pain should be compensated. This Province's system currently covers some instances of chronic pain, and at very high costs.

As research and response strategies unfold regarding these difficult subject areas, there is a need to ensure the regulatory and policy flexibility is there to respond.

With respect to chronic pain and occupational disease in particular, the Task Force suggests that specific legislative authority be included in the Act to enable the Commission to make regulations in these areas, subject to the approval of the Lieutenant-Governor in Council. The Task Force would suggest as well that any regulations developed in these areas involve prior consultation with appropriate stakeholders.

Task Force Recommendations on Entitlement

That the *Workplace Health, Safety and Compensation Act* be amended as follows:

- ♦ to include, under Section 60, specific reference to the benefit of doubt provision, with the provision to apply only when the evidence for or against a claim is equal in weight.
- ♦ to clarify that entitlement for benefits shall not include pre-existing conditions or non work-related injury.
- ♦ to provide specific authority for the Commission, with approval of the Lieutenant-Governor in Council, to make regulations dealing with chronic pain and occupational disease after appropriate consultations have first been held.

"Do not cut injured worker benefits. Explore options of what is fair and just for injured workers."

**Jackie Menchenton
Mount. Pearl**

"CAPP is opposed to an increase and/or decrease in benefit levels...better management of the system is the key to financial stability."

**Canadian Association of
Petroleum Producers**

"One crucial area that needs to be addressed is...employees earning less than \$200 per week who will receive 100% of their pre-injury income. This practice must stop. The compensation system would be fair and consistent to the 80% level regardless of what the pre-injury earnings were. Most importantly, this policy provides a financial disincentive to the injured worker to participate in a return-to-work program."

Sobeys Inc.

Benefits

What We Heard

The vast majority of stakeholders — workers and employers alike — agree that the basic benefit level paid to injured workers should not be reduced. Employers agree there should be no benefit enhancements until the system's financial problems are resolved. Ideally, workers would like to see the benefit level increased.

Since January 1998, the benefit level is 80% of net earnings. Compensation benefits are not taxable. No jurisdiction in the Atlantic region applies a minimum compensation level.

Task Force Assessment

The Task Force agrees that the basic benefit level of 80% of net earnings should not be lowered. Given the nature of the immediate financial pressures facing the system, the Task Force has also come to the inescapable conclusion that now is not the time to speak of increasing benefits.

Minimum Compensation

A minimum compensation level has been arbitrarily set at \$200 per week since the 1970s. This means a worker's benefit level will be paid at \$200 a week or 100% of net earnings if average weekly net earnings is less than \$200. For example, a worker whose net earnings is \$190 per week receives the full \$190, and not \$152 (80% of \$190). A worker with net earnings slightly above \$200 also receives greater than 80% of net earnings. For example, at \$220 per week net earnings, a worker will receive \$200 and not \$176 (80% of \$220).

What We Heard

Many employers question why such a minimum is necessary. They conclude it is a basic principle of the system that workers receive 80% of their pre-injury wages as compensation. Various industries point out that there is a major disincentive with this policy when an injured employee can receive as much or more while on compensation as when working. Some worker representatives support dropping the minimum compensation requirement. Others, however, support maintaining it as a means to assist low wage earners.

Task Force Assessment

From the Task Force perspective, the minimum compensation policy is inappropriate and can act as a disincentive for some workers to return to work quickly. It is also inconsistent with the basic wage-loss principle of replacing lost income. The Task Force sees no role for such a provision at this stage. This notwithstanding, the Task Force suggests that the minimum compensation level be maintained for surviving spouses.

Compensation for Dangerous Occupations

What We Heard

Under the *Occupational Health and Safety Act*, all workers are entitled to exercise their right-to-refuse work in potentially dangerous situations. Some workers, such as Royal Newfoundland Constabulary (RNC) police officers, through other legislation, are prohibited from exercising this right. These workers, who have the potential to become seriously injured on the job, advocate that they should be entitled to 100% wage-loss benefits (as opposed to 80%). In their opinion, it is unfair for them to suffer any loss of income in the event of an injury incurred in the line of active duty.

At the Round Table forum there was widespread support for the position of the RNC Association. A minority opinion thought providing 100% compensation to any group would be unfair and against the principle that compensation benefit levels be consistent for all workers. Several did question the extent to which this potential new policy should be applied, given that many categories of workers are employed in potentially dangerous occupations.

Task Force Assessment

The Task Force agrees with the general principle advanced by the RNC Association, namely, that workers who are prohibited legislatively from exercising the right-to-refuse dangerous work under the *Occupational Health and Safety Act* should be entitled to 100% of net earnings if they become injured in the line of active duty.

The Task Force does not agree, however, that the mechanism to pay this 20% differential should be the workers' compensation system. No other Canadian jurisdiction provides a higher compensation rate for such workers. Instead, the Task Force believes that the employer should accept this financial obligation as these workers are serving in the public interest. The Task Force therefore suggests that Government amend the *Workplace Health, Safety and Compensation Act* to permit this increased level of compensation accordingly.

Surviving Spouses

What We Heard

The Task Force heard representations from surviving spouses seeking retroactive payments for survivor benefits they feel are due them under the *Charter of Rights and Freedoms*.

"We feel that our proposal is reasonable and the Government of Newfoundland and Labrador is morally obligated to provide 100% Workers' Compensation Coverage to our members when carrying out their sworn duties."

RNC Association

*"I recommend an amendment
to the Workplace Health,
Safety and Compensation
Act...to have our benefits
reinstated back to 1985."*

**Diane Baggs-Bursey
Shoal Harbour**

The *Charter*, which came into effect on April 17, 1985, changed the way Commissions across Canada deal with the payment of benefits to surviving spouses. Prior to that date, and for some time after, benefits payable to surviving spouses were terminated when they remarried. In particular, two groups of surviving spouses are affected: those who remarried prior to April 17, 1985 and those who remarried after April 17, 1985.

On January 1, 1993, Newfoundland amended its Act to provide for the reinstatement of monthly benefits to both groups of spouses from that point onward. Surviving spouses are seeking retroactive reinstatement of benefits to April 17, 1985 for the pre-1985 spouses, or to the date of remarriage for post-1985 spouses.

Task Force Assessment

Payments to surviving spouses is an important issue for the Task Force and the Commission. Any decision must balance the needs of surviving spouses as well as all injured workers who rely on the workers' compensation system for financial support.

There have not been consistent court decisions or provincial approaches in dealing with this issue across the country. All jurisdictions have taken (or are in the process of taking) legislative action to reinstate full retroactive benefits for the post-1985 spouses, effective April 17, 1985. The Task Force supports Government taking similar action here for these widows. The cost to the Commission will be approximately \$450,000. This is in addition to the \$1.0 million paid out to this group since 1993.

For the pre-1985 spouses, provinces have addressed this issue in different ways. While some provinces have reinstated these benefits with full retroactivity, others have offered one-time lump-sum payments in the range of \$80,000-85,000.

The pre-1985 spouses in this province (70 of them) have been receiving monthly benefits since 1993. A total of about \$4 million has been paid and will continue into the future. Continuing with these benefit payouts from 1993 will see this Province pay more in total than several other provinces. On an individual basis, the average payout to spouses will be in the range of \$170,000 (net present value). The Task Force considers the current level of payout for this group, without retroactivity, to be appropriate.

Recurrences

What We Heard

This item was raised at the Round Table forum. There were mixed opinions on how to establish a compensation rate in the event of an injury recurrence. Section 77 of the Act states that when an injured worker returns to full employment and suffers a recurrence, the worker shall be entitled to benefits based on the greater of the earnings at the time of the initial injury or the recurrence.

Employers feel compensation benefits must be based on the most recent earnings consistent with the basic principle of providing compensation for loss of actual earnings capacity.

Workers oppose any modification to this provision. They fear that amendments may result in less long-term protection for some injured workers.

Task Force Assessment

Section 77 automatically presumes that low or no earnings at the time of a recurrence must be the result of disability caused by the original injury. In the Task Force's opinion, this presumption is not necessarily correct. Reduced income may result from any number of factors including, changing work patterns, high unemployment, persistent underemployment, wage freezes, transient industries, or deliberate personal choices to stop or reduce workforce participation. It cannot, therefore, be presumed that low or no earnings at the time of a recurrence will always be the result of the original injury.

If there is a loss of earning capacity resulting from the initial injury, then compensation benefits will already have been payable for that loss. Section 77 appears to be a carryover from the pre-1984 legislation and should have been amended when the wage-loss system was introduced.

Pension Replacement

What We Heard

Concerns were raised regarding the extent to which pension replacement benefits are available to injured workers at age 65 and beyond. Section 75 of the Act provides for compensation for the full value of pension losses where an injured worker can demonstrate that the pension benefits s/he would normally be entitled to at age 65 will be reduced because the worker was on workers' compensation. Added concern was raised that pension benefits are not payable upon the death of an injured worker to the spouse or dependents. Finally, an injured worker must be actually receiving workers' compensation benefits at age 65 in order to qualify for subsequent pension benefits.

"...the Act be amended to accommodate spousal and pension benefits to the injured worker and their dependants which would be equal to any pension benefit that they would have received had they not been injured."

**International
Longshoreman's
Association, Local 1953**

"Workers' compensation wage-loss benefit calculations shall be based on an injured worker's total net salary and there shall be no maximum salary level established on which the benefit is calculated."

**Newfoundland and
Labrador Teachers'
Association**

Task Force Assessment

On the surface, the Task Force acknowledges there may be some problems in the way pension benefits are administered. Unfortunately, it does not have the capacity or expertise to address such a complex matter as pensions administration in the short time allotted for this review. There are hundreds of pension plans with varied provisions that need to be considered before changes in this area can be contemplated. The potential financial implications could be significant.

The International Longshoreman's Union noted in its brief to the Task Force that changes in this area should not be done without careful and proper research and consultations. The Task Force fully agrees and suggests that the entire subject of pension benefits warrants review.

Maximum Compensable Earnings

What We Heard

A number of submissions forwarded to the Task Force by worker groups supported removing the cap on the amount of benefits that can be paid to injured workers. From their perspective, workers should be entitled to 80% of their total net earnings regardless of the amount, and not be capped at 80% of \$45,500. Under the current policy, workers earning higher than this amount are being penalized unfairly. Employer groups favoured leaving the policy unchanged, noting that all jurisdictions apply the same practice of capping compensable earnings.

Task Force Assessment

The Task Force notes that the maximum earnings level in this province has long exceeded that of the other three Atlantic provinces. It feels that the current maximum level for compensable earnings is appropriate.

Task Force Recommendations on Benefits

- ♦ That the *Workplace Health Safety and Compensation Act* be amended to repeal the requirement for a minimum level of compensation to injured workers, with the exception of surviving spouses.
- ♦ That the *Workplace Health, Safety and Compensation Act* be amended to ensure that workers who are prohibited legislatively from exercising their right-to-refuse dangerous work under the *Occupational Health and Safety Act* be entitled to receive 100% of net earnings when injured in the line of active duty. The differential of 20% of net earnings above workers' compensation entitlement should be borne by the employer.
- ♦ That the benefits to surviving spouses in the post-1985 group be fully reinstated, effective April 17, 1985 or the date of remarriage, whichever is later.
- ♦ That the level of benefits to surviving spouses in the pre-1985 group be continued at their current levels.
- ♦ That the *Workplace Health, Safety and Compensation Act* be amended with respect to injury recurrence to ensure that compensation is paid on the basis of earnings at the time of the recurrence.
- ♦ That the Commission embark upon a thorough review of the pension benefit provisions of the *Act* in consultation with appropriate stakeholders.

"BGI believes that the current appeals process is not working and supports a limitation on the process such that only errors of fact, and not interpretation, are subject to appeal."

Barry Group Inc.

Appeals

What We Heard

There were a variety of comments offered by employers, injured workers and organized labour on the current appeal processes. The overriding conclusion was that improvements were needed to speed up the process, ensure more consistent decision-making and introduce greater accountability. Most of the commentary centred on the role and authority of the external review agency, the Worker's Compensation Review Division (WCRD).

One group representing injured workers felt that too many injured worker appeals were being overturned at WCRD, and they had to wait too long (sometimes several months) before receiving any benefits. Several groups suggested shortening the time lines, while two employers suggested that the two appeal processes be combined into one.

On the external review process, one major labour group proposed that the current single adjudicator process at WCRD be replaced with a bipartite appeals tribunal with an extended jurisdiction to include appeal of regulations and policies made by the Commission. Some of the other highlights in this submission included: the Commission not having any standing at external appeal hearings, time limits being set for the Commission to implement appeal decisions; eliminating the 90-day limit for workers to file an appeal, and introducing a 30 day time limit for reconsideration of WCRD decisions.

Employers mostly focussed their comments on WCRD. Many employers and employer groups felt that the role of WCRD should be limited to ensuring that the Commission made a reasonable decision based on legislation, policies and procedures and in accordance with administrative law principles. Another repeated comment included having more external appeals heard by the Review Commissioners located in the regions.

Task Force Assessment

Workers' compensation is a complex system and inevitably generates a large number of decisions and appeals. In 2000, there were 1260 internal appeal decisions made and 360 external appeal decisions.

The Task Force is satisfied that there is merit in maintaining separate internal and external appeal processes. The current setup is more cost effective than having all appeals heard by WCRD where Commissioners are paid on a per case basis. The internal review process also serves in many ways as a "quality control" check in the system.

What is needed most is a clearer distinction of the roles of each appeal process. The Task Force fully recognizes that changes to both processes are necessary. The Task Force is satisfied that the current "single adjudicator" process at WCRD is more effective than the former appeal tribunal process of the mid-1990s.

Respecting the internal review process, the Task Force is of the view that some duplication with the WCRD process can be eliminated if the internal review is limited to a paper file review. Hearings can be reserved for the WCRD process, if necessary. Reducing the scope of internal review could reduce the time for decisions from 90 days to 45 days. Further, the current period of 90 days allowed to file an appeal could be shortened to 30 days under normal circumstances.

The new time limit for making an appeal should be complemented with a requirement by the objecting party to clearly state the grounds for objection (this does not always happen). This way WCRD can determine if a full hearing is required to adjudicate an appeal, and decisions on appeals can be rendered efficiently and effectively.

While WCRD has an important role to play in ensuring objectivity in the decision-making process, some of its decisions, in the Task Force's view, have misinterpreted the Act and policy intended by the Commission. Many of the key sections of the Act were developed by Government in close consultation with the Commission.

The current environment has led to greater uncertainty and a high degree of unpredictability in decision-making. More decisions are also ending up in Court. The Task Force and many stakeholders feel that WCRD must show greater deference to the policies established by the Commission's Board of Directors, which represents all of the stakeholders in the system. Improving the effectiveness and efficiency of WCRD requires legislative changes to the Act.

Time limits need to be shortened for external appeals as well. The current 90-day timeframe for WCRD decisions can be reduced to 60 days where hearings are required, and 45 days where no hearings are involved. The time frames are not unrealistic if the cases are spread more evenly amongst all of the Review Commissioners across the province, and the complement of Commissioners increased as required.

The Task Force is not aware of any formal rules of procedures and evidence that are followed by WCRD. The Task Force is strongly of the view that rules need to be developed and followed by all Review Commissioners to ensure a level playing field and consistent decision-making. It is important that regular training of Review Commissioners also occurs to keep abreast of changes in Commission policy, administrative law, rules of evidence, etc..

"Legislation should be changed to reflect that the role of the WCRD is limited to ensuring that the Commission made a reasonable decision based on legislation, policy and procedures. As with other forms of appeal, the review should be based upon the same information used by the WHSCC in arriving at their decision — no new evidence or information should be allowed."

**Health Care Corporation
of St. John's**

Task Force Recommendations on Appeals

- ▶ That the *Workplace Health, Safety and Compensation Act* be amended as follows:
 - ◆ That the Workers' Compensation Review Division (WCRD) be bound by *the Act*, Regulations and policies of the Commission and show appropriate deference to valid and reasonable decisions made by the Commission.
 - ◆ That Review Commissioners not decide on reconsideration requests where they originally decided the matter.
 - ◆ That the Commission be granted reconsideration where, in the opinion of the Commission, the Review Commissioner has not properly applied *the Act*, Regulations or Commission policy.
 - ◆ That the current period of 90 days allowed to file an appeal with WCRD be reduced to 30 days. Reconsideration requests should also be limited to 30 days.
 - ◆ That all requests for appeal be required to clearly state the grounds for the objection.
 - ◆ That the 90-day time frame for decisions by WCRD be reduced to 60 days for hearings and 45 days if no hearings are involved.
 - ◆ That the cases heard by WCRD be more evenly distributed among, and heard by, the regional Review Commissioners.
 - ◆ That the complement of Review Commissioners be increased as needed to meet the new time lines for WCRD decisions.
 - ◆ That Section 20 of *the Act*, which permits the Commission to hold internal appeal hearings, be repealed.
- ▶ That the Commission make the following amendments to its policies and procedures pertaining to internal appeals:
 - ◆ That the period allowed to file an appeal internally on any matter be 30 days.
 - ◆ That the internal review of appeals be limited to a paper file review.
 - ◆ That the time line for decisions of internal review be reduced to 45 days from 90 days.
- ▶ That pursuant to Section 27(1) of the *Workplace Health, Safety and Compensation Act*, WCRD develop appropriate rules of procedure and evidence to guide its activities, with such procedures to include specific requirements for regular training and information sessions on Commission policy and rules of administrative law.

Administration

What We Heard

Much was heard about the administration of the system. Several groups raised questions about the management of the system, whether things are being done efficiently and cost effectively. There is a perception that administration costs are too high and several ideas for cost reduction were offered. An increased presence of staff in the regions was also suggested. The areas of case management, injured worker retraining to return them to gainful employment, investigations, enforcement procedures, even the phone system and how the Commission handles customer service came under scrutiny, as did the organizational and management structure.

Comments were also made about the lack of meaningful reporting to the public on the performance of the Commission. The Annual Report was not seen as particularly useful in its current form and stakeholders suggested more forums and interactions directly with Board members, such as the Round Table, would be welcomed.

Task Force Assessment

The Task Force agrees that administratively the Commission must operate in a business-like fashion and be responsive to the needs of all its clients. Senior management and the Board of Directors recognize this too and, in December, 2000, initiated a process to have an independent review conducted of the Commission's operations. It had been years since such an exercise was undertaken and the Board aspires to the view that there is always merit in periodically having an external body assess what and how you're doing in meeting clients' needs. A public call for proposals from qualified consultants was issued on February 3, 2001.

The members of the Task Force also look forward to more face-to-face interactions with its stakeholders in future in their capacity as Board members. As a beginning, the Task Force intends to convene a meeting of key stakeholders to explain the positions taken in this report as soon as it is appropriate after its presentation to Government.

Task Force Recommendations on Administration

- ♦ That the Board of Directors of the Commission ensure that the independent review of operations be conducted and concluded in a timely manner.
- ♦ That the Commission review its Annual Report, with a view to improving the content, particularly the operational aspects of the Commission and sector-specific reporting.
- ♦ That the Board of Directors of the Commission engage in more open dialogue with its key stakeholders through regular forums.

"The Commission must... effectively operate an insurance system with all the proper checks and balances required for continued service to all at a reasonable cost."
Atlantic Provinces Trucking Association

"Reduce & eliminate the duplication in directors and management. Change around the staff to challenge them for new ideas and interest to promote quality."
Newfoundland and Labrador Injured Workers' Association

"NLHBA believes employers, employees and the medical profession all take Workers' Compensation for granted. With better claims management and increased claims investigations, less fraudulent claims would result."

The Newfoundland and Labrador Home Builders Association

Enforcement By Commission

Investigations

What We Heard

Strong, but somewhat differing, views were expressed by employers and workers on the topic of investigations, particularly the role of the Commission in investigations and how investigations are carried out.

While many employers generally feel there is substantial abuse in the system, workers believe such claims of abuse are greatly exaggerated. Workers also feel that there is unjust attention being focused on prospective abuse by injured workers, when abuse is likely occurring equally, if not more so, by employers.

Employers suggest that the level of investigative effort at the Commission is inadequate to deal with even a small level of abuse that might be present. They noted frustration when instances of possible abuse by workers and other employers are not investigated. Employers indicate that resources must be realigned to ensure effective investigations take place, including using private investigators if necessary.

While workers may not agree on the extent of abuse in the system, they do support the view that any abuse on the part of injured workers, employers, or health care providers must be addressed fairly and in a timely way.

Task Force Assessment

The Task Force is unaware of any reliable method for quantifying the level of fraud or abuse in the system. Regardless of the level, the Task Force believes that a zero-tolerance policy should be aggressively enforced, and that the Commission must be more effective in addressing and prosecuting abuse.

The Task Force agrees that the Commission's current complement of investigators may be insufficient. There are only four investigators covering the Province. In addition to conducting investigations, these investigators are also responsible for informational activities related to claims processing and third party actions. Perhaps utilizing the services of professional investigative expertise to complement staff efforts may be needed. Enhanced promotion and use of the Commission's reporting hotline 778-1324 or 1-800-563-9000 might also contribute to identifying and curtailing some of the abuse that may be in the system.

Penalties and Fines

What We Heard

Several groups question whether the *Workplace Health, Safety and Compensation Act* is being enforced as effectively as possible. The general consensus is that more can and should be done.

Task Force Assessment

The Task Force agrees. Of particular note is the fact that the fines and penalties in the *Act* provide for less authority and opportunity to apply penalties and are lower than many other Canadian jurisdictions. A thorough review of the penalty provisions of the *Act* is warranted and needs to be completed on a priority basis by the Commission, in consultation with the Department of Justice. Ensuring maximum ability to apply penalties and ensuring that the level of penalty is sufficient to serve as a deterrent is critical.

Task Force Recommendations on Enforcement by Commission

- ♦ That the Commission's policy of zero tolerance for system abuse and fraud be aggressively enforced.
- ♦ That the Commission immediately take measures to increase the quality and frequency of investigations to catch and prosecute all abusers of the system.
- ♦ That the Commission take immediate steps to improve and promote a reporting hotline.
- ♦ That the Commission, in concert with the Department of Justice, review the fine and penalty provisions of the *Workplace Health, Safety and Compensation Act* on a priority basis to ensure they are sufficient to act as a deterrent.

"The employers who disregard the minimal laws of this province have to be heavily fined, closed down, and yes even jail time! Try that for an incentive to have your workplace safe!"

Newfoundland and
Labrador Injured Workers'
Association

"Penalties collected under the OH&S Act should be deposited into the Injury Fund."

Round Table Participants

"The Provincial Government, through the Department of Environment and Labour, should provide greater resources and support for OH&S regulatory and enforcement activity."

**Newfoundland and Labrador
Construction Safety
Association**

"The Department must adopt a much more stringent approach to monitoring and enforcement at the workplace level and all violations of the OH&S Act must be prosecuted."

**Newfoundland and Labrador
Federation of Labour**

Role of Government

Funding of Government Activities

What We Heard

Workers and employers alike questioned, especially at the Round Table, why the workers' compensation system is financing the full costs of the Inspection Division of the Department of Environment and Labour. Annual costs of the Department to administer the *Occupational Health and Safety Act* are approximately \$3.4 million. This represents an inappropriate charge against the Injury Fund and should be used to reduce the unfunded liability. Further, if the workers' compensation system is funding Government's activities, then any funds derived from prosecutions under the Act should be deposited directly into the Injury Fund.

Task Force Assessment

The Task Force fully concurs with these views.

Enforcement of Occupational Health and Safety Act

What We Heard

Employers and workers generally appeared united in their criticism of the Department's efforts in monitoring and enforcing the *Occupational Health and Safety Act*. All agreed that a more proactive and stringent approach is needed, and all violators should be prosecuted without exception. In this regard, it was noted that for the three-year period 1998-2000, only 10 companies were charged for violations of the Act. Stakeholders are not convinced that the low number of charges is indicative of the level of safety in workplaces in this province.

Task Force Assessment

The Task Force suggests that effective enforcement of the *Occupational Health and Safety Act* is critical in the overall plan to eliminate or reduce workplace accidents. To this end, it strongly believes that Government, as is proposed for the Commission, should strongly enforce a zero tolerance policy for any violations under the Act. A clear message needs to be sent that workplace violations will no longer be tolerated. In this context, the Task Force commends the Minister of Environment and Labour for his recent actions in laying charges for alleged repeat violations of the Act.

But more needs to be done. The Task Force suggests that only with a significant increase in inspectors can any meaningful difference be made in this area. It is not possible for 20 or so inspectors (several of whom are relatively new) to visit all workplaces in the Province with any frequency or effect. Further, to maximize these inspections, the Task Force suggests that inspectors be more aligned by industry and trained accordingly.

Task Force Recommendations on the Role of Government

- ◆ That effective April 1, 2001, Government assume all costs associated with enforcement of the *Occupational Health and Safety Act* by the Department of Environment and Labour.
- ◆ That any funds derived from prosecutions under *the Act* be deposited directly into the Workers' Compensation Injury Fund.
- ◆ That the Department of Environment and Labour increase substantially its compliance monitoring and enforcement of the *Occupational Health and Safety Act*, that the number of inspectors be increased significantly, be aligned by industry/sector and trained accordingly.
- ◆ That the Department of Environment and Labour enforce a zero tolerance policy for violations of the *Occupational Health and Safety Act*.

Framework For The Future

In writing this report and its recommendations, the Task Force has taken very seriously the strongly held views expressed to it repeatedly throughout the consultations that the problems confronting the workers' compensation system are OUR problems and that a MINDSET CHANGE is required on the part of everyone (employers, workers, injured workers, unions, Commission, health care providers) if we are going to address them.

The Task Force has also heeded calls from stakeholders that they want to be more involved in the system, but they need to know more definitively what their roles and responsibilities should be. Finally, it acknowledges injured workers' requests for more respect, more involvement and better communications with them in developing return-to-work and medical recovery programs.

In this report, the Task Force has laid out a long-term plan which it believes will fix the system permanently, from both a financial and claims management perspective. It is not recommending an increase in employer assessment rates or a decrease in benefits. Instead of these quick fix solutions, the Task Force has approached the problem from its systemic root — how to reduce the number and duration of claims and the number of injured workers going on long-term disability.

It is proposed that new and substantially increased responsibility for the system be placed in the hands of the workplace parties (employers and workers), starting with prevention. Our goal ideally should be to put the Workplace Health, Safety and Compensation Commission out of business!

Should an injury occur, then it is the injured worker and the employer who know what is best for getting the worker back on the job. Everything possible needs to be done to ensure that the injured worker maintains that linkage with the workplace. Should return to work with the pre-injury employer not be possible, then the Commission should work closely with the injured worker to identify suitable job alternatives and provide the appropriate rehabilitation support and training needed to maximize the probability of the worker's return to the labour force. New return-to-work strategies which call for more cooperative responsibilities and heightened communications amongst the workplace parties and the Commission are proposed consistent with these goals.

The Task Force has tailored its proposals keeping in mind the overarching objective of a fair, affordable and sustainable INSURANCE system. Many employers demand that their assessment rates reflect more closely their actual claims experience. If they have high rates of injury, then they deserve to pay more than those with better performance. The Task Force agrees that a review of the rate setting model is in order.

On the benefits side, the system was designed, and must only pay, for those injuries that are work related. Compensation and rehabilitation programs must also be based on the principle of employability, and not job availability. The system was not designed for, nor can it financially support, expansion beyond these limits.

It is important that the appeals processes be efficient, and the decisions consistent and transparent. More effective administration and enforcement of the workers' compensation system and the Occupational Health and Safety Act by the Commission and the Department of Environment and Labour respectively are also critical. The Task Force makes several recommendations on these fronts.

The issues surrounding the workers' compensation system are complex and interwoven. Sometimes what may appear to be small demands for system changes can have significant financial impacts. The Task Force has presented what it believes is a balanced set of proposals that addresses all of the major problems and concerns in a financially responsible way.

The Task Force has listened. It has developed a long-term plan, which, if successful, should lead this province to competitive assessment rates with the rest of the country, and especially the other Atlantic provinces. It could also lead to further improvements in benefits to 85% over time. How well we do, and how fast we get there, is up to all of the stakeholders. If everyone does their part, we will get there very, very quickly!

Without a major shift in all of our thinking about this system and our roles in it, in other words, CHANGING THE MINDSET, we will not fix this system. Failure to act decisively and immediately risks the imperative of drastic increases in assessment rates and/or drastic reductions in benefits in the future.

The first step to reform is Government's endorsement of the overall plan as articulated in this report, particularly the core legislative actions upon which so much of the plan depends. Given the integrated role of Government and the Commission in making the necessary changes to fix the system, the Task Force will be proposing to Government that it stay involved in finalizing the necessary legislative proposals.

The future is up to us all — let's act wisely to ensure a fair, affordable and sustainable insurance system for current and future injured workers!

Summary of Recommendations

Prevention

1. That a provincial accident prevention strategy be developed on a priority basis, led by the Commission with the involvement of all key stakeholders.
2. That the Department of Environment and Labour aggressively enforce the provisions of the *Occupational Health and Safety Act* pertaining to health and safety committees.
3. That, effective January 1, 2002, training be mandatory for all health and safety committee members in companies with 50 or more employees. For smaller companies (10-49 employees), training for the co-chairs of the committee be mandatory.
4. That, effective January 1, 2002, worker representatives be mandatory for all companies with less than 10 employees, and that training be mandatory for these individuals.
5. That the Commission monitor health and safety committees and worker representatives to ensure that they have undertaken the legislated training and the meetings held are effective.
6. That legislation be amended to ensure paid leave is available for persons participating in the above-referenced committee and worker representative training.
7. That for smaller companies where the designated worker representative is non-management, management employees seriously consider taking health and safety training as well.
8. That employers be legislated to report back in a timely manner on the actions to be taken on the recommendations made by the health and safety committees or worker representatives.
9. That the Commission strengthen the standards for workplace health and safety training by developing a strategic training program and a process for the setting of standards for training providers. Immediate priority be given to the development of a training protocol for occupational health and safety committees and worker representatives.
10. That the Minister of Education ensure that an appropriate course in occupational health and safety, along the lines of Workplace Safety 3220, be part of the core high school curriculum, commencing the Fall of 2001.

11. That the Minister of Education embark immediately upon consultations with public and private post-secondary institutions and other relevant stakeholders with the objective of having health and safety education a mandatory part of every post-secondary program.
12. That the Commission aggressively launch both global and targeted education and awareness initiatives to ensure all stakeholders (i.e., workers, employers, unions, health care providers) fully understand their respective roles and responsibilities under both the *Occupational Health and Safety Act* and the *Workplace Health, Safety and Compensation Act* (including its administrative processes).
13. That the Commission and the relevant stakeholders pursue the establishment of sectoral committees, with a view to having several functioning within six months.
14. That new Ergonomics Regulations under the *Occupational Health and Safety Act* be developed along the lines of those in British Columbia.
15. That the Commission and the Department of Environment and Labour ensure better delineation and coordination of their respective mandates and associated activities.

Early and Safe Return-to-Work

16. That the *Workplace Health, Safety and Compensation Act* be amended to introduce a new mandatory cooperative return-to-work model as described in Appendix 6 of this report.

Health Care Provider Accountability

17. That the Commission pursue all appropriate measures to increase the accountability of health care providers in ensuring the appropriateness and timeliness of medical services provided to injured workers.
18. That the Commission embark upon further dialogue with the Department of Health and Community Services and groups such as acupuncturists and message therapists to explore ways and means by which such professions can be recognized by the Commission for health care purposes when appropriate.

Assessments

19. That the Commission proceed immediately to revise the assessment rate classification system and implement the changes effective January 1, 2002.
20. That the Experience Rating System be amended to include surcharges of 40% beginning January 1, 2002, with the current discount of 20% to remain.
21. That the Commission investigate further the appropriateness of implementing a monthly payroll reporting system on a revenue neutral basis.
22. That the Commission conduct a detailed actuarial review of all self-insured employers with a view to pursuing that action which ultimately is in the financial best interest of the overall workers' compensation system.
23. That the Commission ensure the total administration fee for self-insured employers is sufficient to cover all relevant expenditures incurred in association with said claims.
24. That the Department of Environment and Labour consult with the Department of Health and Community Services and the Commission with a view to bringing closure to the question of eligibility of self-employed home support workers for workers' compensation coverage.
25. That the Commission immediately examine any and all existing limited-life projects to ensure that assessment revenue is sufficient to cover their project-related claims.
26. That the Commission, in consultation with the Department of Justice, review the current legislation to ensure that the Commission has full flexibility to apply any assessment model it deems appropriate to minimize any financial risk associated with limited-life projects, with legislative amendments to be made as deemed appropriate.
27. That the current allowance for a disaster fund reserve be removed, with the need for such a fund to be left to the discretion of the Commission.

Entitlement

28. That the *Workplace Health, Safety and Compensation Act* be amended as follows:
 - (a) to include, under Section 60, specific reference to the benefit of doubt provision, with the provision to apply only when the evidence for or against a claim is equal in weight.

- (b) to clarify that entitlement for benefits shall not include pre-existing conditions or non work-related injury.
- (c) to provide specific authority for the Commission, with approval of the Lieutenant-Governor in Council, to make regulations dealing with chronic pain and occupational disease after appropriate consultations have first been held.

Benefits

- 29. That the *Workplace Health Safety and Compensation Act* be amended to repeal the requirement for a minimum level of compensation to injured workers, with the exception of surviving spouses.
- 30. That the *Workplace Health, Safety and Compensation Act* be amended to ensure that workers who are prohibited legislatively from exercising their right-to-refuse dangerous work under the *Occupational Health and Safety Act* be entitled to receive 100% of net earnings when injured in the line of active duty. The differential of 20% of net earnings above workers' compensation entitlement should be borne by the employer.
- 31. That the benefits to surviving spouses in the post-1985 group be fully reinstated, effective April 17, 1985 or the date of remarriage, whichever is later.
- 32. That the level of benefits to surviving spouses in the pre-1985 group be continued at their current levels.
- 33. That the *Workplace Health, Safety and Compensation Act* be amended with respect to injury recurrence to ensure that compensation is paid on the basis of earnings at the time of the recurrence.
- 34. That the Commission embark upon a thorough review of the pension benefit provisions of the *Act* in consultation with appropriate stakeholders.

Task Force Recommendations on Appeals

- 35. That the *Workplace Health, Safety and Compensation Act* be amended as follows:
 - (a) That the Workers' Compensation Review Division (WCRD) be bound by the *Act*, Regulations and policies of the Commission and show appropriate deference to valid and reasonable decisions made by the Commission.
 - (b) That Review Commissioners not decide on reconsideration requests where they originally decided the matter.

- (c) That the Commission be granted reconsideration where, in the opinion of the Commission, the Review Commissioner has not properly applied *the Act*, Regulations or Commission policy.
 - (d) That the current period of 90 days allowed to file an appeal with WCRD be reduced to 30 days. Reconsideration requests should also be limited to 30 days.
 - (e) That all requests for appeal be required to clearly state the grounds for the objection.
 - (f) That the 90-day time frame for decisions by WCRD be reduced to 60 days for hearings and 45 days if no hearings are involved.
 - (g) That the cases heard by WCRD be more evenly distributed among, and heard by, the regional Review Commissioners.
 - (h) That the complement of Review Commissioners be increased as needed to meet the new time lines for WCRD decisions.
 - (i) That Section 20 of *the Act*, which permits the Commission to hold internal appeal hearings, be repealed.
36. That the Commission make the following amendments to its policies and procedures pertaining to internal appeals:
- (a) That the period allowed to file an appeal internally on any matter be 30 days.
 - (b) That the internal review of appeals be limited to a paper file review.
 - (c) That the time line for decisions of internal review be reduced to 45 days from 90 days.
37. That pursuant to Section 27(1) of the *Workplace Health, Safety and Compensation Act*, WCRD develop appropriate rules of procedure and evidence to guide its activities, with such procedures to include specific requirements for regular training and information sessions on Commission policy and rules of administrative law.

Administration

- 38. That the Board of Directors of the Commission ensure that the independent review of operations be conducted and concluded in a timely manner.
- 39. That the Commission review its Annual Report, with a view to improving the content, particularly the operational aspects of the Commission and sector-specific reporting.

40. That the Board of Directors of the Commission engage in more open dialogue with its key stakeholders through regular forums.

Enforcement by Commission

41. That the Commission's policy of zero tolerance for system abuse and fraud be aggressively enforced.
42. That the Commission immediately take measures to increase the quality and frequency of investigations to catch and prosecute all abusers of the system.
43. That the Commission take immediate steps to improve and promote a reporting hotline.
44. That the Commission, in concert with the Department of Justice, review the fine and penalty provisions of the *Workplace Health, Safety and Compensation Act* on a priority basis to ensure they are sufficient to act as a deterrent.

Role of Government

45. That effective April 1, 2001, Government assume all costs associated with enforcement of the *Occupational Health and Safety Act* by the Department of Environment and Labour.
46. That any funds derived from prosecutions under *the Act* be deposited directly into the Workers' Compensation Injury Fund.
47. That the Department of Environment and Labour increase substantially its compliance monitoring and enforcement of the *Occupational Health and Safety Act*, that the number of inspectors be increased significantly, be aligned by industry/sector and trained accordingly.
48. That the Department of Environment and Labour enforce a zero tolerance policy for violations of the *Occupational Health and Safety Act*.

Appendix 7 further delineates all of the recommendations by Government action and Commission action.

APPENDIX 1

PUBLIC DISCUSSION PAPER

TASK FORCE ON THE WORKERS' COMPENSATION SYSTEM

DISCUSSION PAPER

TASK FORCE ON THE WORKERS' COMPENSATION SYSTEM

November 2000

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Introduction

The workplace health, safety and workers' compensation system in Newfoundland and Labrador is in a precarious financial position. Assessment revenue is no longer sufficient to meet rapidly increasing costs and, as a result, the viability of the system is uncertain.

Prompted by this situation, Government has appointed a Task Force to examine the financial dilemma, as well as the governing legislation and overall objectives and effectiveness of the system. The Task Force is comprised of members of the Board of Directors of the Workplace Health, Safety and Compensation Commission. The Board of Directors is responsible to Government and stakeholders for monitoring and governing the system. Board members are chosen from key stakeholder groups - employers, workers and the public - and as such, must understand and represent these interests as effectively as possible, while ensuring system viability. The Task Force is headed by the Chairperson of the Board, J. Wayne Trask. Other Board members appointed to the Task Force are: Reg Anstey (Fish Food and Allied Workers' union); Roger Flood (Day and Ross); Judy Vanta (Newfoundland and Labrador Association of Public and Private Employees); and Don Warr (Blackwood and Warr).

This paper outlines the extent and nature of current problems and it is intended to facilitate discussion and seek input from stakeholders. There is no simple explanation of why costs have increased so dramatically in recent years. Similarly, there is no simple solution. A common goal must be to establish groundwork for achieving a sustainable system for the future. The Task Force will assess stakeholder opinion and aim for consensus on how the issues can be effectively addressed in the interests of current and future injured workers, employers, and Newfoundlanders and Labradorians.

The Task Force will be assisted by Mr. Conrad Ferguson, an actuary from the firm Morneau Sobeco. He has been actuary for the Commission since 1990 and for the New Brunswick Commission since 1987. From 1994 to 1996, he was Chair of the Canadian Institute of Actuaries' Standards of Practice Committee on Workers' Compensation. The detailed financial analysis contained in this document was provided to the Task Force by Mr. Ferguson.

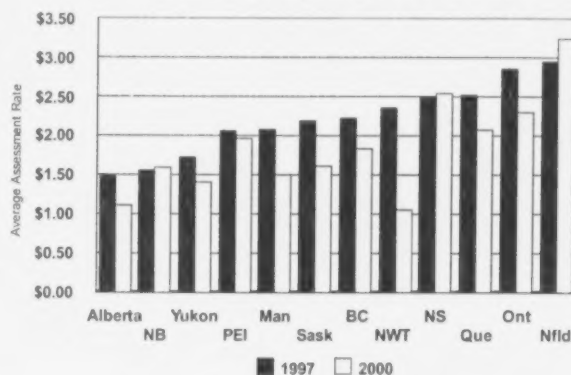
How the system is funded

The Commission operates a no-fault insurance system which guards against occupational injury, disability and fatalities. It encourages and promotes injury prevention and health and safety programs that foster effective disability management and return-to-work practices in all workplaces. It pays wage-loss benefits - at the level of 80% of pre-injury net earnings - to injured workers covering short and long-term disability, as well as health care costs associated with a work injury (i.e. doctor's fees, hospitals, drugs, travel, physiotherapy, chiropractic care, etc.). As part of its mandate the Commission must also ensure sufficient funds are available to pay benefits to present and future injured workers and their dependents.

The system is funded entirely by employers and in return for entitlement to adequate benefits under the Workplace Health, Safety and Compensation Act (the Act), injured workers and dependents give up their right to sue employers for injuries arising from their employment. The Act requires all employers with one or more workers to register with the Commission and pay an annual premium based on their payroll and level of risk — usually identified by demonstrated claims cost experience - in their industry. The premium charged is known as the assessment rate. In 2000, the average assessment rate paid by employers in this province is \$3.24 per \$100 of payroll. Rates range from \$0.34 on the low end to \$24.46 on the high end. For example, an annual premium of \$16,200 would be paid to the Commission by an employer with an assessment rate of \$3.24 and a payroll of \$500,000.

This is an important consideration because assessment rates are calculated the same

**Average Assessment Rates
Per \$100 Payroll, 1997 & 2000**



DISCUSSION PAPER

Task Force on the Workers' Compensation System

way across Canada. Newfoundland and Labrador has the highest assessment rates in the country. The next highest average assessment rate is Nova Scotia at \$2.54, and the rates in the majority of other jurisdictions are decreasing. Although Newfoundland and Labrador rates are high, a straight comparison between provinces is difficult. Legislative differences must be taken into account, such as the fact that the Act in this province covers a higher percentage of the workforce compared to other provinces. High assessment rates create challenges for the provincial economy in terms of its ability to create a competitive, attractive environment for the development of new business and employment opportunities.

Brief financial history

Between 1986 and 1989, the average assessment rate increased from \$1.79 to \$2.31. In 1989, it was confirmed that the wage-loss system (introduced in 1984) was more costly than anticipated.

By 1990, two comprehensive actuarial studies indicated that costs were escalating so dramatically that the system was in danger of falling apart if serious measures were not taken. At the end of 1990, the Commission's unfunded liability was \$113 million. Unfunded liability is that portion of benefits owing to current and future workers not yet funded. In 1991, the Commission adopted a full funding policy which would eliminate the unfunded liability by 2012.

In 1991, a Statutory Review Committee recommended benefit reductions as one way of restoring stability. In 1993, Government enacted changes which, among other things, altered the method of funding benefits after age 65, and reduced the benefits payable to injured workers from 90% of net earnings down to 75% of net for the first 39 weeks of disability and 80% thereafter. There was also a temporary freeze on indexing of long-term disability benefits.

Meanwhile, employers were asked to pay more. In 1991, the average assessment rate was increased to \$2.88 from \$2.43. In 1992, an annual \$13.4 million dollar surcharge to help amortize the unfunded liability was also added to employer assessments. By 1994, the average assessment rate was \$3.18.

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In 1996 and 1997 costs increased marginally and there was growth in assessment revenue which placed the Commission ahead of its funding targets. In 1997, the average assessment rate was \$2.96. The Commission's decision making practices, particularly those associated with deeming (discussed in Appendix I), were heavily criticized following the 1997 Statutory Review Report [*A Time to Refocus*]. Following that, the Commission removed a minimum wage provision from its deeming policy which meant that more workers would qualify for long-term disability benefits. In 1998, worker benefits were improved when Government increased benefit levels to 80% of net for the first 39 weeks, and reduced the offset for Canada Pension Plan disability benefits from 80% to 75%.

Claims costs for short and long-term disability increased very rapidly in 1998 and 1999. There was an abrupt increase in lost time claims — more than 30% — beginning in May 1998. Virtually all new claims were due to strains, sprains or non-specific work incidents, across all industries. Examples of other cost pressures include expanded coverage due to certain appeal decisions and lower tax rates resulting in higher benefit levels. The Commission's unfunded liability at the end of 1999 was \$180 million.

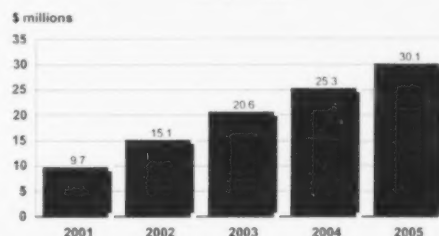
The 2012 target for full funding now appears out of reach. In 2001, the average assessment rate is maintained at \$3.24. To achieve the 2012 full funding target the average assessment rate for 2001 would have to be \$3.98; in fact, it would have to be \$3.53 just to meet cash flow requirements. Because of increasing costs current assessment rates can no longer provide for the \$13.4 million surcharge to amortize the unfunded liability.

Extent of current financial problems

The Commission is responsible for covering the costs of current and future liabilities on behalf of injured workers. If enough cash is not raised to pay its annual costs - a cash flow shortfall - the Commission is forced to borrow.

- In October 2000, the Commission's Board of Directors agreed to freeze employer assessment rates for 2001. As a result, it is projected that the Commission will experience a cash flow shortfall of \$9.7 million in 2001. A \$30.1 million shortfall is projected for 2005 if the situation is left unchecked.

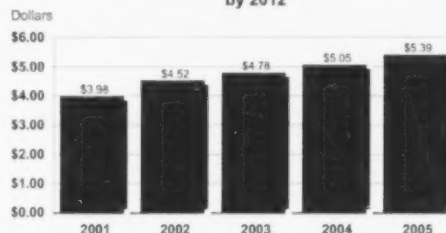
**Projected Cash Flow Shortfall
2001 - 2005**



- The Commission's injury fund - the total amount of money set aside to fund payment to injured workers in the future - will be wiped out sometime between 2010 and 2015 if assessment rates remain frozen at current levels, cash flow requirements continue to be unmet and investment funds are used to meet annual obligations.

The Commission should collect enough assessment revenue from employers to cover current and future costs of this year's injuries. This is the only way to effectively manage an insurance system of this nature and is the accepted method throughout the country. This is the approach the Commission has been pursuing since 1991, when it established 2012 as its target date for being fully funded.

**Average Assessment Rate
for Full Funding
by 2012**



- To achieve full funding by 2012, the average assessment rate would have to be \$3.98 in 2001 and \$5.39 by 2005.

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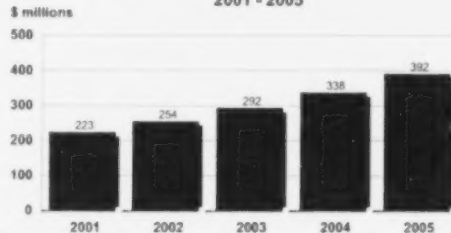
Task Force on the Workers' Compensation System

The financial stability or level of health of a workers' compensation system is often measured by its unfunded liability or the portion of benefits owing to current injured workers that is not yet funded.

The Commission's unfunded liability increased by \$69 million to \$180 million in 1999.

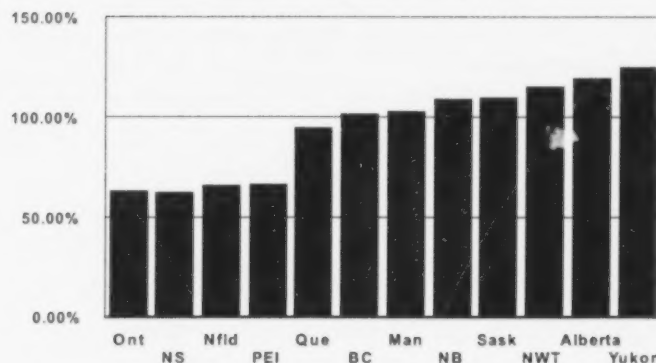
If changes are not made, the unfunded liability is projected to be at least \$392 million by 2005.

**Growth and Projected Trend
Unfunded Liability
2001 - 2005**



- The Commission's funded ratio decreased by 8.6% to 65.5% in 1999. In other words, in 1999, the Commission only had enough money (assets) to cover 65% of the cost of future benefits to injured workers currently on the system.
- If no change is made to the current system by 2005, the funded ratio could be as low as 51%.

**Funded Ratio by Jurisdiction
At December 31, 1999**



To put the current financial dilemma in context, using current assessment rate levels, claiming patterns and trends and claims administration:

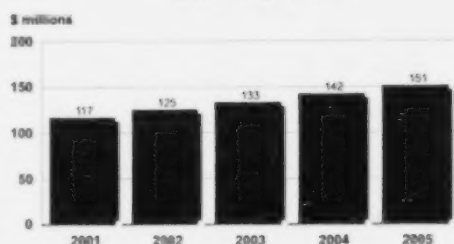
- the system can only support a benefit rate between 60% and 65% of pre-injury net earnings for injured workers, in order to achieve full funding by 2012; or,
- claims frequency and duration would have to be reduced by at least 25%.

Injury costs

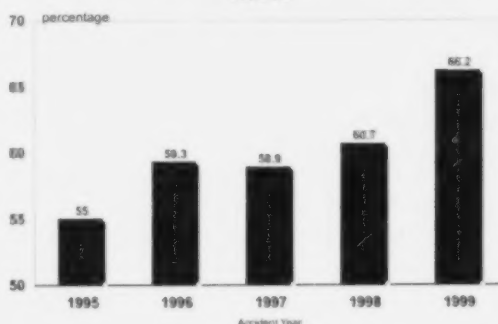
The cost of new injuries from 1993 and 1997 were between \$51 and \$56 million per year. In 1999 they jumped to \$97 million and are projected to increase to \$151 million in 2005.

There does not appear to be one particular cause to which the increasing injury claims can be attributed. What is apparent is that soft tissue injuries constitute an increasing majority of claims. This broad class of injuries includes strains, sprains, pain, repetitive strain injuries, carpal tunnel syndrome, muscle soreness, etc. Very often, there is no obvious causative accident. This class of injury makes up 66% of claims and the strong trend of more soft tissue injuries occurs across all industries.

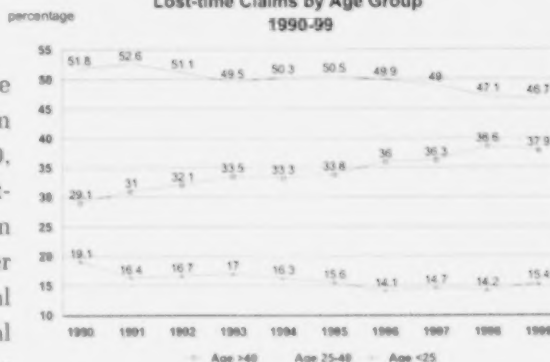
Claims Cost Growth for New Injuries



Soft Tissue Injuries as Percentage of Lost-time Claims 1996-99



Lost-time Claims by Age Group 1990-99



In 1990, one out of every five lost-time claims came from workers over age 40. In 1999, two out of every five lost-time claims came from workers over age 40. Older workers take longer to heal and require more medical care. The over age 40 group is the only age group with an increasing incidence of lost time injuries since 1990.

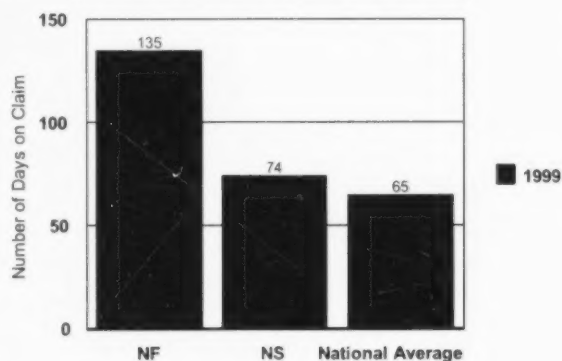
Composite duration, as measured by Association of Workers' Compensation Boards and Commissions of Canada, is significantly higher in Newfoundland and Labrador than the next highest Canadian jurisdiction and more than twice the national average. This measures the incidence of short-term disability.

Providing compensation for long-term disability is the most complex aspect of managing a workplace injury insurance program. Not only is it difficult to judge what is fair and reasonable compensation for those who cannot easily return to the workforce because of injury, these benefits are very costly. Costs have increased rapidly for long-term disability benefits in recent years and long-term disability liabilities make up 35% of new injury costs.

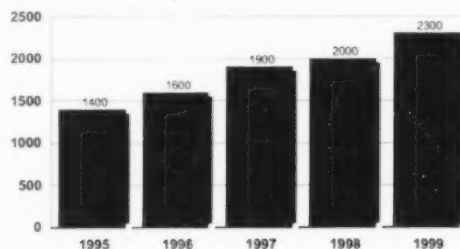
The number of long-term disability claims in Newfoundland and Labrador is at least twice the expected average for a wage loss system and 60% higher than anticipated based on experience to the end of 1997.

Long-term benefit liabilities have grown over a two year period - 1998 to 1999 - from \$188 million to \$295 million and represent 60% of Commission benefit liabilities. They could reach as high as \$515 million by the end of 2005.

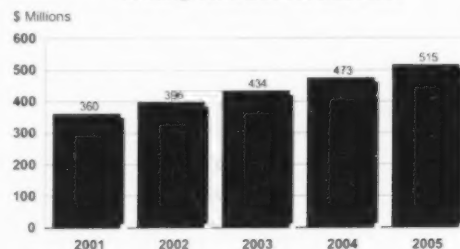
**AWCBC composite duration
(Measures short-term disability)**



**Total Number of
Long-Term Disability Claims**



**Projected Amount
of Long-Term Benefit Liabilities**



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From a financial perspective, no doubt there has been a dramatic expansion of the system. More benefits are being paid out over longer periods of time. Various factors contribute to increasing duration and costs. For example, in addition to external factors such as lack of workplace programs or high unemployment, there is evidence that benefits are increasingly extended because of factors not necessarily related to the work injury (such as preexisting conditions), or because of internal factors such as varying interpretations of important legislative provisions.

- A random sampling of 250 long-term disability claims at December 31, 1999 indicated that a significant portion of liabilities is due to more liberal entitlement adjudication practices.
- Generous application of the benefit of doubt clause - a standard for weighing evidence for and against a claim - and related inconsistencies between Commission and Workers' Compensation Review Division interpretations is resulting in broader coverage and acceptance of more claims.

In summary, there are striking increases in injury costs over the last two years. In the interests of current and future injured workers, in particular, it is critical to strike a balance between what is fair and equitable, but also what is financially sustainable.

Roles and responsibilities of workplace parties

Injury prevention and early and safe return-to-work are the best options for achieving a stable and financially sustainable system. There is much evidence to show that workplace-based injury prevention and disability management strategies - developed cooperatively by labour and employers, and supported by Commission policies — effectively minimize human and financial costs. However, effective prevention and disability management programs cannot be achieved without understanding, commitment and cooperation by all workplace parties.

These kinds of programs and strategies are not new in Newfoundland and Labrador. Many employers, unions and injured workers have partnered with the Commission, or acted by themselves, to encourage and promote the adoption of health and safety programs. Whenever these programs prevent an injury or result in early and safe return to work, the incidence and severity of long-term disability is significantly reduced. The end result is highly beneficial for the injured worker and employer. Factors for consideration include:

- Independent workplace-based efforts are essential. There is only one Commission, but 14,000 employers and many thousands of injured workers requiring effective early intervention assistance.
- Health care providers must better understand workplaces and options available to injured workers, as well as the importance of early and safe return to work.
- Employers must be actively involved in prevention; investigation of circumstances of reported injuries; claims management; and, return to work efforts.
- A significant number of employers do not invest sufficient resources in injury prevention and disability management activities because they may not view these as cost effective.
- It is impossible to have lower, competitive assessments if costs remain high.

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One approach to defining the roles and responsibilities of workplace parties is to include a statutory requirement for employers to re-employ injured workers (generally known as the duty to accommodate). There is a trend in workers' compensation systems across Canada to promote such responsibilities.

Duty to accommodate provisions were the subject of a public consultation process initiated by the Commission in March 2000. An overview of the feedback received by the Commission in that consultation process is contained in **Appendix I**.

Workers who are not accommodated by the injury employer, or by some other employer, are prevented from successfully reintegrating into the workforce and represent another potential case for long-term disability. Long-term disability costs often far exceed the cost of any accommodation. The average cost of a long-term disability claim is approximately \$110,000. The \$110,000 is only the reserve necessary to fund future long-term disability benefits. The total cost of failing to accommodate an injured worker is far in excess of \$110,000. These large amounts are significant cost drivers which determine how much the Commission must collect from employers.

Average annual savings exceed \$1 million for every 10 injured workers that are effectively accommodated and prevented from falling into long-term disability.

In 1999 alone, the Commission set up over 300 long-term disability claims.

The Commission's role

The Commission is responsible for playing a leadership role in creating an environment which encourages the adoption and retention of workplace-based prevention and disability management programs. It must act as educator and facilitator for these processes and, ultimately, it must increase awareness and promote educational initiatives in consultation and cooperation with stakeholders.

In fact, the Commission's ultimate goal is the promotion of healthy work environments that are accident and injury free. It must continue forging linkages with stakeholders to advance the adoption of safe workplace practices throughout Newfoundland and Labrador.

The Commission has a responsibility to ensure that injured workers have appropriate and timely access to medical rehabilitation and other services. Also, it educates stakeholders on their duties, roles and responsibilities under the Act and best practices in workplace health and safety. The Commission also conducts ongoing review of its policies to ensure they support prevention and disability management practices in the workplace, and are in line with the legislative mandate.

Tighter control over the cost of administering the system has been raised as a possible option for achieving savings and financial stability. The Board of Directors must ensure that Commission's operations are administered as efficiently and effectively as possible. Recently, the Commission initiated a major review of internal operations, conducted by an external consultant. Improvements will occur as a result of the consultant's recommendations.

Many groups have already come forward with their views. Injured workers indicate that they do not receive adequate or timely responses from the Commission. There are general concerns about the level of accountability within the health care system which plays such a critical role in achieving beneficial outcomes for workers. Some groups have raised concerns with the high caseload experienced by case managers and the difficulty they have in effectively managing claims and returning injured workers to the workforce. Some employers have suggested that case managers be individually assigned to employers to assist

them with their disability management programs. And employers have asked the Commission to increase its investigation capabilities.

There are numerous issues and demands. It is clear that the Commission must continually reexamine its performance and ability to meet the challenge of providing effective service to all stakeholders.

Some issues for discussion

Appendix I presents some key issues which the Task Force wishes to discuss specifically. The Task Force provides these issues as a means of promoting dialogue and facilitating discussions during the consultation process on issues identified by stakeholders as possible key areas of change. By providing these issues the Task Force **does not intend to limit the discussion in any way**. It invites discussion on any and all issues of concern.

Conclusion

If costs are not curtailed or assessment rates are not significantly increased, the Commission's injury fund will be wiped out within 15 years.

There are no simple solutions, but stakeholders must seriously consider the direction of the system. The challenge is to achieve a balance between reasonable levels of revenue and costs. Alternatives include increasing assessment revenue through higher rates for employers; restricting access to benefits through legislation, policy and adjudication practices; or reducing benefit levels through legislation. Other critical alternatives include more intensive injury prevention and disability management programs.

A strategy must be developed in cooperation with stakeholders which responds to the current financial situation and seeks to ensure that all stakeholders fully accept their responsibilities to prevent injuries and return injured workers back to health and meaningful employment, or support them with a fair level of benefits if they are not capable of returning to employment.

The members of the Task Force look forward to receiving input from stakeholders concerning the future of the system at this difficult point in time.

Options for Financial Stability

- Increase assessment revenue
- Restrict access to benefits
- Reduced benefit levels
- Injury Prevention
- Disability Management

Feedback

You can make your views known to the Task Force either in person at the public meetings or through written submissions.

If you wish to make a presentation at one of the public meetings, please contact the task force office at (709) 778-1221, or 1-800-563-9000, by December 29th, 2000. You can also register your request directly by e-mail: bmillan@whscc.nf.ca. The number of requests will determine the schedule of presentations.

It is requested that written submissions be forwarded to the Task Force no later than January 12, 2001.

The location and dates for the Task Force public meetings are:

Labrador City	January 15	Two Seasons Inn
Corner Brook	January 16	Glynmill Inn
Gander	January 17 (AM)	Albatross Hotel
Clareville	January 17 (evening)	Clareville Inn
St. John's	January 18 & 19	Battery Hotel & Suites

Information and material related to the Commission's operations such as the annual report, board approved policies, and employer assessment rates can be obtained by contacting the task force office or by visiting the Commission's website at www.whscc.nf.ca

Appendix I

Some key issues for discussion

Prevention Strategy

Employers and employees share responsibility for prevention of workplace injuries and illness. In this province, there is the need for a cultural change in the workplace which fosters a major shift in the attitudes and behaviours of workers and employers with respect to prevention. Our challenge is to convince employers and workers of their responsibility for workplace health and safety and look for opportunities to bring them into injury prevention programs.

Over the past several months, the Commission and the Department of Environment and Labour have collaborated to address issues relating to health and safety. It recognized that this collaboration must expand to include the Newfoundland and Labrador Federation of Labour, the Newfoundland and Labrador Employers' Council, the Newfoundland and Labrador Construction Safety Association and others with a prevention mandate. Ultimately, this initiative will see the development of a provincial strategy focusing on prevention issues and the reduction of workplace injuries.

Occupational Health and Safety Committees

Occupational Health and Safety Committees are a very important element of a comprehensive workplace health and safety management program. They provide a forum for employers and workers to address health and safety concerns in the workplace, evaluate workplace hazards, make recommendations for corrective action and promote the awareness of health and safety in the workplace. The Commission recognizes that effective health and safety committees and workplace health and safety representatives are essential to creating the workplace partnership needed to protect workers' health and safety.

In most jurisdictions across Canada, Occupational Health and Safety Committees are mandatory. In accordance with the Occupational Health and Safety Act of Newfoundland and Labrador, Occupational Health and Safety Committees are required in all workplaces where there are ten (10) or more workers employed. Worker Health and Safety Representatives are recommended in all other workplaces.

It is estimated that of the 14,000 employers in the province, approximately 1,200 employers employ ten (10) or more workers. This means that the majority of employers (90%) do not have Occupational Health and Safety Committees because of their size. Nor have they established Worker Health and Safety Representatives. In other words, the majority of employers do not have an appropriate mechanism in place to address workplace health and safety concerns.

Rate Setting Model

Workers' compensation boards and commissions in Canada are funded entirely by employers. All jurisdictions use an industrial classification system to assign employers to rate groups and establish assessment rates. Assessment rates may not be comparable among jurisdictions because the rate groups may have different compositions of industries. The Commission has 84 rate groups for which assessment rates are established. Some of these rate groups are not statistically credible and therefore may have wide variations in their rates from year to year.

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Many jurisdictions have revised their classification system and rate setting model to improve equity and statistical credibility. In some cases this has meant substantial increases and decreases for individual employers who have been reassigned to other rate groups.

The revised rate setting processes also provide for large variances, for example plus/minus 25%, in yearly base assessment rates which improved equity and assigned the cost to employers who have high injury costs.

A detailed breakdown of the Commission's 84 rate codes and current premiums being charged is available at the Commission and also on the Commission's website at www.whscc.nf.ca.

Experience Rating

Many jurisdictions in Canada have used experience rating to shift the cost of injuries from a rate group to individual employers. Employers whose claims costs are above the industry average pay a surcharge on their base assessment rate and employers whose claims costs are below the industry average receive a discount on their base rate or a refund of their assessment premiums.

Supporters of experience rating maintain that experience rated assessments provide a more equitable distribution of injury costs among employers, an incentive for prevention programs, and a stimulus for claims management programs. Opponents of the programs argue that experience rating compromises the collective liability principle, encourages employers to control costs after an injury has occurred through underreporting, and diverts attention away from accident prevention to claims cost control.

The maximum surcharge and discount in our province is 20%. There are other jurisdictions whose maximum discounts are as high as 40% and whose maximum surcharges are as high as 80%.

Self-Insurers

Self-insured employers are individually responsible for the actual cost of injuries incurred by their employees. They pay an administrative fee to the Commission for the administration of the actual claims. This method of insurance coverage is provided to a limited degree in Canada and generally applies to government departments and crown corporations. Employees of the Federal and Provincial Government are covered by the self-insured method in Newfoundland and Labrador.

Unfunded Liability

The unfunded liability is the difference between expected future liabilities and the value of the assets committed to meet the liabilities. Unfunded liabilities have arisen because injury costs were higher than anticipated; payrolls have declined in some industries; legislation changes has increased benefits; assessment rates that were set below the revenue required to fully fund the costs of injuries. Jurisdictions that are not fully funded have developed plans to amortize the unfunded liability over a period of time.

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Waiting Periods

Under the Act, the employer is responsible for paying the wages to the injured worker on the day of injury. The Commission begins paying compensation benefits for wage-loss on the second day of disability.

Two Atlantic provinces - Nova Scotia and New Brunswick - have adopted a concept known as a "waiting period" before compensation is payable. The waiting periods in Nova Scotia and New Brunswick are, respectively, two and three days. Therefore, compensation benefits for wage loss are payable beginning on the third and fourth days, respectively.

Benefit Levels for Injured Workers

The benefit level payable to injured workers in Newfoundland and Labrador is 80% of net earnings. Net earnings is "take home" pay, i.e. the amount left after appropriate income tax, EI and CPP deductions are made from gross earnings. Compensation benefits are not taxable.

Benefit percentage levels in the other jurisdictions are:

Alta.	B.C.	Man.	N.B.	N.W.T.	N.S.	Ont.	P.E.I.	Que	Sask.	Yukon
90% net	75% gross	90% net 1st. 24 mths. then 80% net	85% net	90% net	75% 1st. 26 wks. then 85% net	85% net	80% net 1st. 39 wks. then 85% net	90% net	90% net	75% gross

Indexing Benefits

Under the Act, long-term disability benefits must be indexed annually in accordance with the Consumer Price Index for Canada. Also, benefits paid to survivor benefits are subject to annual indexing at the discretion of the Commission's Board of Directors.

A variety of methods are used in other jurisdictions to index benefits. Indexing may be required by legislation, awarded at the discretion of the Board, or approved by Cabinet.

Deeming

The Commission's policy covering long-term disability is known as Extended Earnings Loss. It has been the focus of much attention because it includes provisions concerning the controversial subject of "deeming". Deeming is a central and necessary component of the Act. [Because of its negative connotations for the worker and for the Commission, the term "deeming" was deleted from the legislation and replaced by the phrase "considered capable of earning."]

Under the Act, the Commission must consider all the evidence and, where appropriate, consider a worker capable of earning a wage even though he or she may not have a job. This is the process commonly referred to as "deeming". All provinces employ some form of deeming.

Modification of deeming practices over the last few years has contributed significantly to the dramatic increase in costs. Many injured workers are not being properly accommodated in terms of return-to-work assistance from employers. Other injured workers find it increasingly difficult to reenter the workforce because there are no suitable job openings. Instead of basing entitlement on the capacity to work and earn (regardless of employment availability) as the Act requires,

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entitlement is often extended to cover matters such as low education levels and inability to find work after an injury. Whether the system should or can afford to provide broad wage-loss protection for matters not directly related to the work injury is debatable.

Duty to Accommodate (and Return to Work)

The objective of duty to accommodate provisions is to promote workplace health and safety and, primarily, to ensure that injured workers who are capable of returning to work have the chance to do so. Although it is not widely known or understood, employers already have a duty to accommodate the needs of an injured worker under Canadian Human Rights Legislation.

Here is a brief overview of the feedback received by the Commission in its consultation process regarding duty to accommodate:

- Stakeholders responded that current return-to-work programs are somewhat effective, but that there is much room for improvement.
- Stakeholders question whether there is adequate involvement of workplace parties.
- Stakeholders suggested increased awareness of Commission programs amongst employers, especially small employers.
- Return-to-work programs are evident among most large employers, but small employers are either unaware or practically unable to participate.
- Small employers, in particular, may find re-employment provisions very expensive.
- Commission programs should be more focused on early intervention with the specific needs of workplace parties in mind.
- Commission policy and procedure should not conflict with the day-to-day roles of workplace parties engaged in return-to-work strategies.
- Stakeholders called for greater communication amongst the workplace parties (i.e. injured worker, employer, doctors, Commission, etc.).
- Some believe education is the key.
- Others believe legislative action (as done in other jurisdictions) is required.

Mandatory re-employment provisions now apply to employers under workers' compensation legislation in over half the provinces. Whether or not duty to accommodate is ever placed in the Act, it is imperative that all parties consider new avenues to promote and support effective workplace-based return-to-work programs. Copies of the Commission's original discussion paper can be found on the Commission's web site [www.whscc.nf.ca].

Benefit of Doubt - Section 60

Under this section of the Act, it is not necessary for a worker to prove his or her case 100%. The Commission must review all the evidence and circumstances of the case and draw "reasonable inferences" in favor of the worker. This standard of proof, generally known as the benefit of doubt, is open to interpretation and is being applied much more liberally over time.

A proper weighing of the evidence is necessary to achieve a fair and equitable result. Rather than a phrase like "reasonable inferences", which is open to interpretation, it may be possible to adopt clearer legislative language.

Other provinces use the phrase "preponderance of evidence" in their legislation to eliminate the possibility that claims might be accepted based on the mere existence of "some" evidence.

Appendix II

Classification of industries & assessment rates

The Commission has divided industry into seven classifications. Each classification is further divided into rate groups. Following is a list of the classifications and selected rate groups. A list of all 84 rate groups can be obtained from the Commission's website or by contacting the Task Force office at (709) 778-1221 or 1-800-563-9000.

Rate Group	Industry	Rate
	<u>Mining</u>	
100	Iron Ore, pyrophyllite and gypsum mining	\$ 2.68
103	Oil/gas production (onshore and offshore) including associated drilling	6.30
200	<u>Forest Products</u>	
	Brush cutting, planing mills, sawmills, surveying of lines of timberlands	9.75
202	Pulp and Paper mills	1.73
	<u>Manufacturing</u>	
301	Corrugated metal, neon signs, metal highway signs	4.63
308	Animal feeds, chemicals, corrosive, acids, fertilizer	3.60
	<u>Construction</u>	
400	Installation of alarm systems, electrical wiring and conduit, sound systems	4.83
403	Building construction, bricklaying, building demolition, general contracting	6.00
	<u>Transportation</u>	
501	Urban transit systems	2.10
507	Distribution of gasoline, propane and other petroleum products	3.16
	<u>Service Industries</u>	
611	Hospitals	4.36
640	Department stores with warehouses and/or trucking facilities	1.92
	<u>Fishing</u>	
700	All fish/mammal processing and handling	4.20
701	Offshore harvesting of fish	24.46

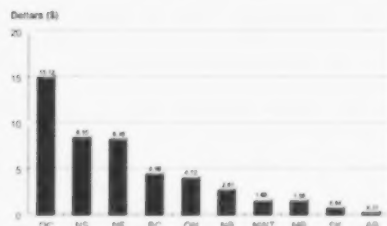
Appendix III

Comparison of industry assessment rates among jurisdictions

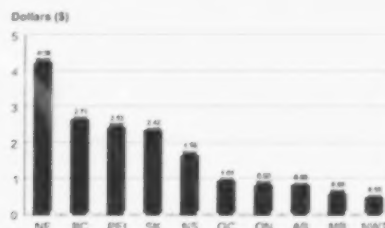
Assessment rates are not always comparable across jurisdictions. Inconsistencies arise because rate groups have many different compositions in terms of which industries are included from one jurisdiction to the next. For example, financial institutions are included with other types of office work in Newfoundland and Labrador, but coverage is optional in Alberta, Manitoba and Ontario for this industry.

The following graphs compare assessment rates for a number of selected industries among jurisdictions in Canada.

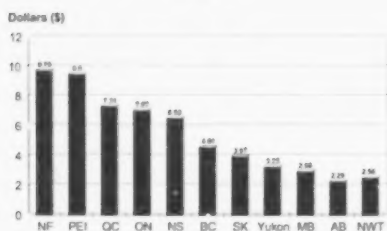
Oil and Gas Exploration
Assessment Rates
2000



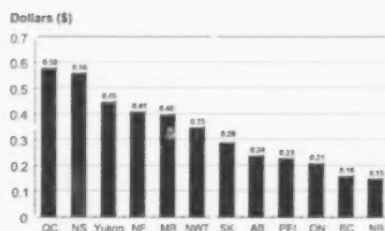
General Hospitals
Assessment Rates
2000



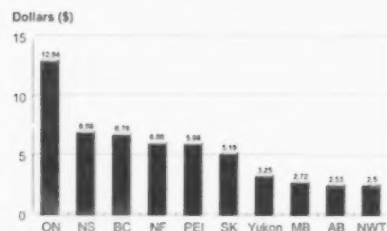
Sawmills
Assessment Rates
2000



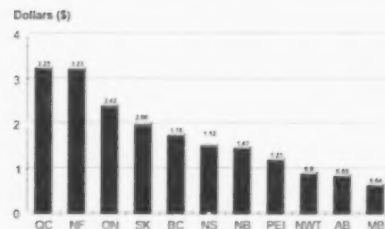
Financial Institutions
Assessment Rates
2000



Construction
Assessment Rates
2000



Hotels and Convention Centres
Assessment Rates
2000



To contact Task Force:

(709) 778-1221,
Toll Free 1-800-563-9000
or email bmillan@whscc.nf.ca

APPENDIX 2

List of Presenters at Task Force Public Meetings

January 15
Labrador City, Two Seasons Inn

Steelworkers' Union - Atlantic Representation

Steelworkers' Union - Local Representation

H.J. O'Connell Construction

Wabush Mines

International Brotherhood of Electrical Workers

Injured Workers' Association, Local Chapter

Clive Hamilton

Town of Labrador City

January 16
Corner Brook, Glynmill Inn

Corner Brook Pulp & Paper Limited Woodlands

Victorian Order of Nurses

William Kennedy

Ron Jesso

Mary Ann Hackett

Injured Workers' Association, Local Chapter

Pauline Tessier

Joan Cranston

Dr. Debbie Brake-Patton

Clyde Way

January 17
Gander, Albatross Hotel

Gander and Area Chamber of Commerce

Jacinta Sinnott

Baie Verte Peninsula Economic Development Association
and Emerald Zone Cooperative

Abitibi Consolidated Inc., Newfoundland Woodlands

Federation of Labour

Communications, Energy & Paper workers
Locals 60N and 63

Association for Community Living

January 17
Clareville, Clareville Inn

D & D Transport

Marine Workers Local 20

Newfoundland & Labrador Medical Association

Hilda Whelan

Patricia Oldford

Diane Baggs-Bursey

Dr Roland Bryans

Canadian Manufacturers & Exporters, Newfoundland Division

Joan Cleary

Melvin Purchase

Bob Dingwall

Eric Marsh

January 18, 2001
St. John's, Battery Hotel

International Longshoreman's Protective Union & St. John's Shipping Association

Randy Collins, NDP, MHA, Labrador West

St. John's Board of Trade

Canadian Association of Petroleum Producers

Health Care Corporation of St. John's

Sobeys Inc.

Paul Pennell

Evelyn Porter

Rosalind Broomfield

Wayne Layman

Gerald Cousins

Canadian Restaurant Association

Newfoundland and Labrador Carriers' Association

Fisheries Association of Newfoundland and Labrador

Tony McCarthy

William King/Janette Ginns

Sharon Gardias/Janette Ginns

Garfield Best/Janette Ginns

Janette Ginns on behalf of Owen White

Newfoundland & Labrador Health Care Association

Dr. Robert Burton

Joe Whelan

Jacqueline Menchenton

Jerome Lawlor

Newfoundland Association of Public and Private Employees

Terry Butler

January 19, 2001

St. John's, Battery Hotel

Injured Workers' Association, Local Chapter

Patricia Dodd

Bill Dodd

Newfoundland Power

Atlantic Building Supply Dealers Association

Friede Goldman Newfoundland Limited

Atlantic Trucking Association

Wayne Pittman

Terrance Rideout

Bill Kelly

Royal Newfoundland Constabulary Association

Chinese Medicine and Acupuncture Association of Canada, Newfoundland and

Labrador Chapter

Newfoundland and Labrador Teachers' Association

City of St. John's

Newfoundland and Labrador Nurses' Union

Canadian Union of Public Employees

Leslie McGrath

Newfoundland and Labrador Building Trades Council

Newfoundland and Labrador Employers' Council

Eric LeGrow

January 20, 2001
St. John's, Battery Hotel

Fish, Food and Allied Workers Union

Hospitality Newfoundland and Labrador

Louise Ade

Patrick Martin

Austin Haynes

Trent Comerford

Steelworkers' Union, Atlantic Refinery

Newfoundland & Labrador Construction Safety Association

Eastern Newfoundland Home Builders Association

Judy Day

Gerry Hynes

Muriel Ross

Geoff Byrne

Ray O'Neill

APPENDIX 3

List of Task Force Submissions

Task Force Submissions:

Canadian Federation of Independent Business
Landscape Newfoundland & Labrador
Bruce Pilgrim, Corner Brook
Robert Blackwood, Carmanville
San-I-Kleen Maintenance
Universal Marine Ltd, All 4 One Fibre Products Ltd.
William Wiseman, Corner Brook
Michael Clarke, Terrenceville
Iron Ore Company of Canada
Jo-Anne Hutchinson, Corner Brook
Advisory Council on Occupational Health and Safety
Colleen Wells, Corner Brook
Newfoundland and Labrador Medical Association
Margaret Buckle, Lanse au Loup
Newfoundland and Labrador Construction Association
Gilles Lortier, Sooke, British Columbia
Newfoundland Environmental Industry Association
Newfoundland and Labrador Construction Safety Association
City of St. John's
Exploits Regional Chamber of Commerce
Health Care Corporation of St. John's
Mechanical Contractors Association of Newfoundland and Labrador
Abbey Management Ltd.
Newfoundland and Labrador Home Builders Association
Port aux Basques and Area Chamber of Commerce
Canadian Manufacturers and Exporters, Newfoundland and Labrador
Newfoundland and Labrador Health Boards Association
Atlantic Building Supply Dealers Association
Theresa Snook, Flat Bay
Alvin Pittman, Mount Pearl
Risk and Insurance Management Society, Inc., Newfoundland and Labrador Chapter
Coleman's
United Steelworkers of America - District 6 - (1)
United Steelworkers of America - District 6 - (2)
H.J. O'Connell Construction Ltd.
Wabush Mines
International Brotherhood of Electrical Workers - Local 2351
Newfoundland and Labrador Injured Workers' Association, Labrador City Chapter
Clive Hamilton
Newfoundland and Labrador Road Builders/Heavy Civil Association Inc.
Royal Newfoundland Constabulary Association
Corner Brook Pulp and Paper Ltd.
Mary Ann Hackett
Newfoundland and Labrador Chiropractic Association
Pauline Tessier
Newfoundland and Labrador Injured Workers' Association, Corner Brook Chapter

Corner Brook Pulp and Paper Limited Woodlands
 Barry Group Inc.
 Joan Cranston
 Victorian Order of Nurses for Canada, Corner Brook Branch
 St. John's Shipping Association Ltd.
 International Longshoreman's Association Local 1953
 Royal Newfoundland Constabulary - Office of the Chief of Police
 Jacinta Marie Sinnott, Gander
 Industrial Union of Marine and General Workers of Canada/Canadian Auto Workers, Local 20
 Abitibi Consolidated Inc. Newfoundland Woodlands
 Dr. Roland Bryans
 Communications Energy and Paperworkers Union
 Dianne Baggs-Bursey, Shoal Harbour
 Gander and Area Chamber of Commerce
 Bill Kennedy, Corner Brook
 Ron Jesso
 Loyola Hearn, MP, St. John's West
 Newfoundland and Labrador Federation of Labour
 Randy Collins, NDP, MHA, Labrador West
 St. John's Board of Trade
 Canadian Association of Petroleum Producers
 Sobeys Inc.
 Rosalind Broomfield, Mount Pearl
 Evelyn Porter, Manuels
 Paul Pennell
 Gerald Cousins
 Canadian Restaurant and Foodservices Association
 Newfoundland and Labrador Carriers Association
 Injured Workers Support Group Inc.
 Sharon Gardias
 Garfield Best, Manuels
 Owen White
 Joe Whelan
 Dr. Robert Burton and Trent Oldford, Spine Centre
 Fisheries Association of Newfoundland and Labrador
 Donna Angel, St. John's
 Newfoundland Power
 Friede Goldman Newfoundland Limited
 Jerome Lawlor, St. John's
 Newfoundland and Labrador Association of Public and Private Employees
 Jackie Menchenton
 Terry Butler
 Newfoundland and Labrador Injured Workers' Association, Mount Pearl Chapter
 Canadian Union of Public Employees
 Newfoundland and Labrador Teachers' Association
 Terrance Rideout
 Chinese Medicine and Acupuncture Association of Canada, Newfoundland and Labrador Chapter
 Newfoundland and Labrador Employers' Council
 Newfoundland and Labrador Building and Construction Trades Council

Hilda Whelan, Whitbourne
Fish, Food and Allied Workers Union
Fibromyalgia Self-help Group of Newfoundland and Labrador Inc., St. John's Branch
Louise Ade
Dray Inc.
Hospitality Newfoundland and Labrador
Safety Solutions Canada
Austin Haynes
Community Volunteer Income Tax Program
Anthony McCarthy
Newfoundland and Labrador Nurses' Union
Atlantic Provinces Trucking Association
Scott's Snack Bar
C&C Enterprises
Newfoundland and Labrador Forestry Training Association

APPENDIX 4

Round Table Participants

ROUND TABLE PARTICIPANTS

Peter O'Brien
Federation of Independent Business

Paula Schumpp
Newfoundland & Labrador Health Boards Association

Roy Foster
Corner Brook Pulp & Paper Limited Woodlands

Jim Skinner
United Steelworkers' of America

Lloyd Hobbs
Newfoundland and Labrador Teachers' Association

Vina Gould
Newfoundland Association of Public and Private Employees

Greg Anthony
St. John's Board of Trade

Roger Jamieson
Hospitality Newfoundland and Labrador

Jim Walsh
United Brotherhood of Carpenters and Joiners

Sean O'Reilly
Royal Newfoundland Constabulary Association

Bill Parsons
Newfoundland and Labrador Building Trades' Council

Tom Diamond
Canadian Association of Petroleum Producers

Gerald Dowden
Newfoundland and Labrador Carriers Association

Marilyn Tucker
For Newfoundland Ocean Industries Association

Larry Welsh
Public Service Alliance of Canada

Rob Wells
Canadian Union of Public Employees

Gerard O'Reilly
International Brotherhood of Electrical Workers

Lorne Bennett
Newfoundland and Labrador Employers' Council

Brad Clarke
Newfoundland and Labrador Construction Association

John Hollohan
Fisheries Association of Newfoundland and Labrador

Elaine Price
Newfoundland and Labrador Federation of Labour

Alice Manion
Newfoundland and Labrador Nurses' Union

Patricia Dodd
Newfoundland and Labrador Injured Workers' Association

Sean McCarthy
Canadian Manufacturers and Exporters

Frazer Jerrett
Iron Ore Company of Canada

David Morris
Canadian Labour Congress

Lana Payne
Fish, Food and Allied Workers Union

Dennis Hogan
Newfoundland and Labrador Construction Safety Association

Gary Brenton
Friede Goldman Newfoundland Limited

Ian McKinnon
Newfoundland and Labrador School Board Association

Wayne Budgell
Communications, Energy and Paper Workers' Union

Dr. Ronan O'Shea
Newfoundland and Labrador Medical Association

APPENDIX 5

**Ergonomics (MSI) Regulations
British Columbia**

ERGONOMICS (MSI) REQUIREMENTS

The purpose of sections 4.46 to 4.53 is to eliminate or, if that is not practicable, minimize the risk of musculoskeletal injury to workers.

Definition	4.46	In sections 4.47 to 4.53 (the Ergonomics (MSI) Requirements) “musculoskeletal injury” or “MSI” means an injury or disorder of the muscles, tendons, ligaments, joints, nerves, blood vessels or related soft tissue including a sprain, strain and inflammation, that may be caused or aggravated by work.
Risk identification	4.47	The employer must identify factors in the workplace that may identificationexpose workers to a risk of musculoskeletal injury (MSI).
Risk assessment	4.48	When factors that may expose workers to a risk of MSI have been identified, the employer must ensure that the risk to workers is assessed.
Risk factors	4.49	The following factors must be considered, where applicable, in the identification and assessment of the risk of MSI: (a) the physical demands of work activities, including (i) force required, (ii) repetition, (iii) duration, (iv) work postures, and (v) local contact stresses; (b) aspects of the layout and condition of the workplace or workstation, including (i) working reaches, (ii) working heights, (iii) seating, and (iv) floor surfaces; (c) the characteristics of objects handled, including (i) size and shape, (ii) load condition and weight distribution, and (iii) container, tool and equipment handles; (d) the environmental conditions, including cold temperature; (e) the following characteristics of the organization of work: (i) work-recovery cycles; (ii) task variability; (iii) work rate.

Note: In work situations where a risk of MSI exists, typically only some factors from the list will be applicable. To assist, the WCB provides a risk factor identification chart in the publication *Identifying MSI Risk Factors*.

Risk control	4.50	(1) The employer must eliminate or, if that is not practicable, minimize the risk of MSI to workers. (2) Personal protective equipment may only be used as a substitute for engineering or administrative controls if it is used in circumstances in which those controls are not practicable. (3) The employer must, without delay, implement interim control measures when the introduction of permanent control measures will be delayed.
Education and training	4.51	(1) The employer must ensure that a worker who may be exposed to a risk of MSI is educated in risk identification related to the work, including the recognition of early signs and symptoms of MSIs and their potential health effects. (2) The employer must ensure that a worker to be assigned to work which requires specific measures to control the risk of MSI is trained in the use of those measures, including, where applicable, work procedures, mechanical aids and personal protective equipment. Note: The WCB provides the pamphlet Understanding the Risks of MSI to assist with the application of section 4.51(1). Materials addressing other matters such as risk assessment and control are also available.
Evaluation	4.52	(1) The employer must monitor the effectiveness of the measures taken to comply with the Ergonomics (MSI) Requirements and ensure they are reviewed at least annually. (2) When the monitoring required by subsection (1) identifies deficiencies, they must be corrected without undue delay.
Consultation	4.53	(1) The employer must consult with the joint committee or the worker health and safety representative, as applicable, with respect to the following when they are required by the Ergonomics (MSI) Requirements: (a) risk identification, assessment and control; (b) the content and provision of worker education and training; (c) the evaluation of the compliance measures taken. (2) The employer must, when performing a risk assessment, consult with (a) workers with signs or symptoms of MSI, and (b) a representative sample of the workers who are required to carry out the work being assessed.

APPENDIX 6

Framework of Proposed Cooperative
Model for Early and Safe Return-to-Work

Framework of Proposed Cooperative Model for Early and Safe Return-to-Work

Essentially there are two elements to the comprehensive return-to-work model being proposed by the Task Force.

Phase I: Return-to-Work: The objective is to return the injured worker with the pre-injury employer as safely and early as possible.

Phase II: Labour Market Re-Entry Planning: The objective is to return the injured worker to workforce employability with other than the pre-injury employer.

A brief discussion of each phase follows:

Phase I: Return-to-Work

A. Responsibility to Cooperate

When a workplace injury occurs, the workplace parties (employer and injured worker) shall be required to cooperate to achieve early and safe return-to-work for the worker.

The employer shall be required to contact the worker as soon as possible after the injury and maintain communications throughout the period of the worker's recovery and impairment.

The injured worker shall contact the employer as soon as possible after the injury and also maintain communications with the employer. The worker shall also assist the employer as appropriate to identify suitable employment that is available, consistent with the worker's functional abilities and that restores, where possible, the worker's pre-injury earnings.

The worker's health care provider is a key participant in this process. S/he may be required to provide limited information regarding the worker's functional abilities to the employer. This information shall be used by the employer solely for the purpose of the return-to-work program.

The Commission's initial role shall be to review and monitor the progress of the workplace parties in achieving early and safe return to work, and to act as a resource and problem solver (including facilitation of medical services and provision of mediation assistance, if required).

Should a matter not be resolved between the workplace parties or through mediation, then the Commission shall decide the matter.

B. Re-Employment Obligations/Duty-to-Accommodate

Re-employment obligations shall apply to employers with 20 or more regular workers, including self-insurers.

The Commission may, on its own (if necessary), or where there is disagreement between the employer and worker, consult with the worker, employer and the health care provider(s) to determine whether the worker is medically fit to return to suitable work or perform the essential duties of the pre-injury job.

Where the worker is able to perform the essential duties of the pre-injury job, the employer shall be required to re-employ the worker in that job or offer alternate employment at a level of earnings comparable to the worker's pre-injury level. A worker medically fit to return to work, but unable to perform the essential duties of the pre-injury job, shall be offered the first suitable job opening.

If these requirements conflict with a collective agreement that is binding upon the employer and if the employer's obligations as proposed here afford the worker greater re-employment terms than does the collective agreement, then these requirements shall prevail over the collective agreement. These provisions should not, however, displace seniority provisions of a collective agreement.

The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. The Commission shall adjudicate disputes on such matters.

The employer shall be obligated to re-employ the worker until the earliest of:

- 2 years after the date of the injury;
- 1 year after the date the employer is notified by the Commission that the worker is medically able to perform the essential duties of the pre-injury job; or
- the date the worker reaches age 65.

If an employer re-employs a worker and then terminates that employment within six months, the employer is presumed not to have fulfilled the re-employment obligations. The employer may rebut this presumption by showing that termination was not related to the injury.

At the worker's request, or on its own initiative, the Commission shall determine whether the employer has met the re-employment obligations to the worker. The worker shall have a limited amount of time (say 3 months) to ask the Commission to review a wrongful termination action after it occurs.

C. Penalties for Failure to Cooperate or Accommodate

If the Commission determines that the employer has not fulfilled the duty to cooperate obligations (section A above), then the employer may be levied a penalty equivalent to the cost of providing wage-loss benefits to the worker as long as the non-cooperation continues.

Where the employer does not comply with the re-employment obligations (section B), the Commission will levy on the employer a penalty not exceeding the amount of the worker's net average earnings for the year preceding the injury, and make payments to the worker for a maximum of one year according to the wage loss policy.

Penalties by way of a loss or reduction in benefits will also be levied on the worker who fails to fully cooperate and participate in the return-to-work process.

All of the above provisions (section A-C) are intended to apply to all sectors, including the construction industry. The Task Force recognizes that there may be some limitations to the application of all of these provisions in the construction industry in particular (e.g. in cases of direct union versus employer hiring). It is imperative that immediate consultations be held with that sector to ensure that the final policy guidelines established by the Commission in this area are relevant and appropriate.

Phase II: Labour Market Re-Entry Planning

The Commission shall provide a worker with a labour market re-entry assessment to determine suitable employment and earnings capacity if:

- the worker is unlikely to be re-employed by the employer because of the nature of the injury;
- the employer is unable to arrange suitable work that is consistent with the worker's functional abilities and restore the worker's pre-injury earnings; or
- the employer is not cooperating in the early and safe return to work of the worker.

This assessment shall evaluate the worker's functional abilities, skills and education level. Based on this assessment, the Commission shall decide if:

- the worker's existing skills provide the capacity to achieve suitable employment and earnings; or
- the worker requires a labour market re-entry plan in order to return to the labour market and reduce or eliminate the loss of earnings that may result from the injury.

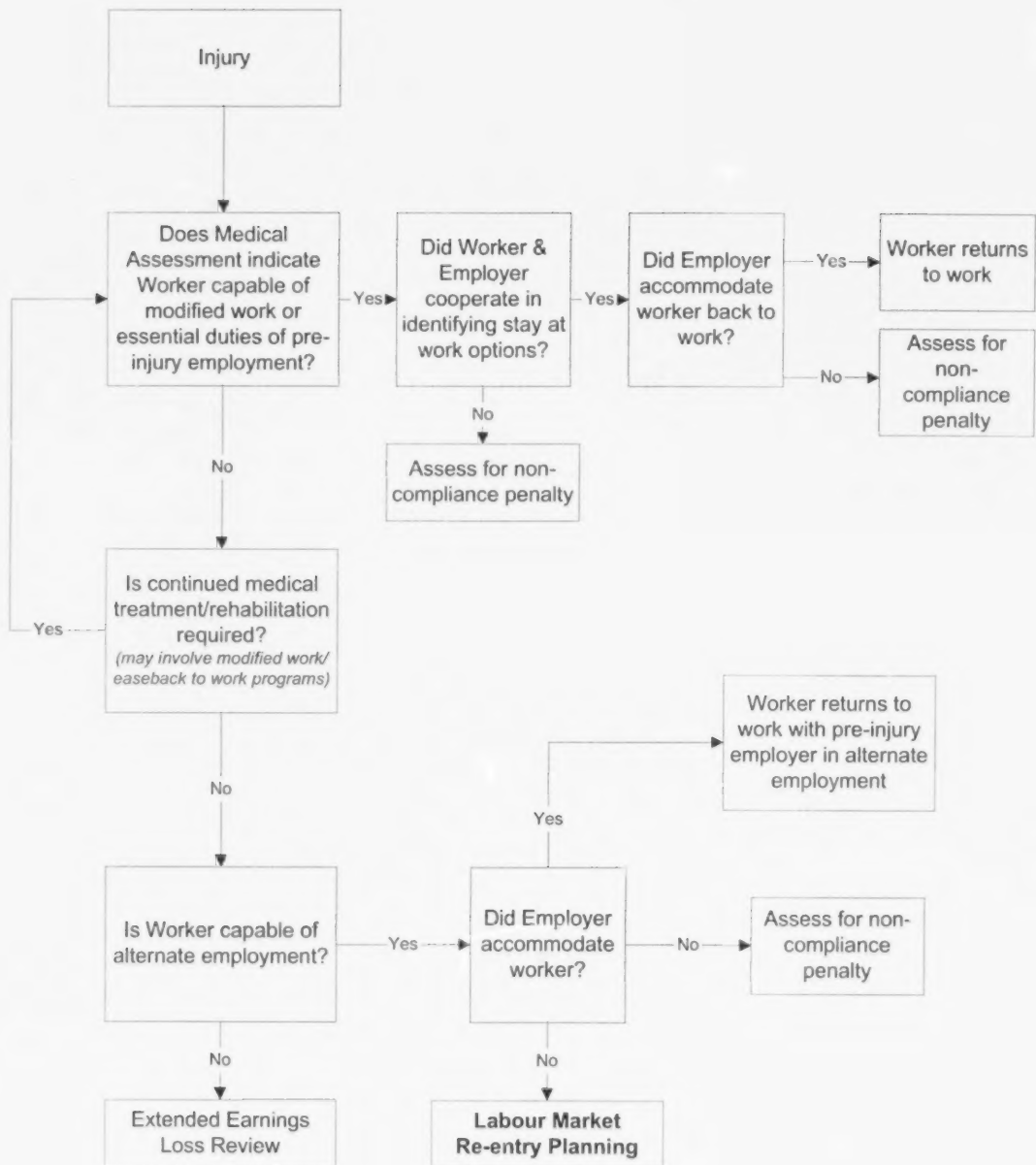
The Commission and the worker (with others as appropriate) shall together develop a labour market re-entry plan if deemed required. The Commission shall determine what expenses related to the plan that it, or the pre-injury employer (who did not cooperate) shall pay. Several labour market re-entry options might need to be explored in finalizing the plan. Once a suitable plan has been developed, the worker will clearly know what the expected outcomes shall be for purposes of determining benefit entitlement at the end of the process.

The worker shall cooperate in all aspects of the labour market re-entry assessment or plan provided to the worker. The worker involved in a labour market re-entry plan shall continue to receive wage-loss benefits. The worker shall be required to participate until completion of the plan or lose entitlement.

A summary diagram depicting this model follows.

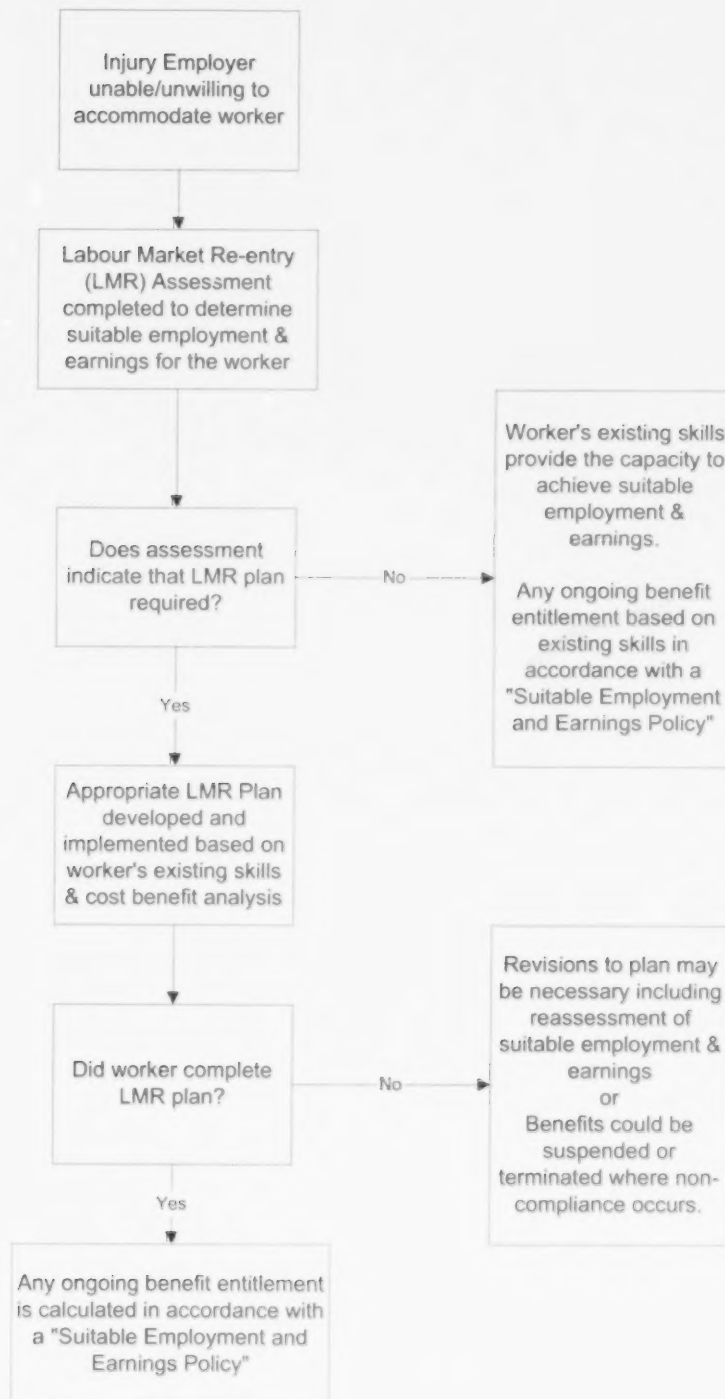
EARLY AND SAFE RETURN-TO-WORK

PHASE I: RETURN-TO-WORK



PHASE II

LABOUR MARKET RE-ENTRY PLANNING



Appendix 7

Summary of Task Force Recommendations

Action by Government

Action by Workplace Health, Safety and Compensation Commission

ACTION BY GOVERNMENT *

Prevention

2. That the Department of Environment and Labour aggressively enforce the provisions of the *Occupational Health and Safety Act* pertaining to health and safety committees.
3. That, effective January 1, 2002, training be mandatory for all health and safety committee members in companies with 50 or more employees. For smaller companies (10-49 employees), training for the co-chairs of the committee be mandatory.
4. That, effective January 1, 2002, worker representatives be mandatory for all companies with less than 10 employees, and that training be mandatory for these individuals.
6. That legislation be amended to ensure paid leave is available for persons participating in the above-referenced committee and worker representative training.
7. That for smaller companies where the designated worker representative is non-management, management employees seriously consider taking health and safety training as well.
8. That employers be legislated to report back in a timely manner on the actions to be taken on the recommendations made by the health and safety committees or worker representatives.
10. That the Minister of Education ensure that an appropriate course in occupational health and safety, along the lines of Workplace Safety 3220, be part of the core high school curriculum, commencing the Fall of 2001.
11. That the Minister of Education embark immediately upon consultations with public and private post-secondary institutions and other relevant stakeholders with the objective of having health and safety education a mandatory part of every post-secondary program.
14. That new Ergonomics Regulations under the *Occupational Health and Safety Act* be developed along the lines of those in British Columbia.
15. That the Commission and the Department of Environment and Labour ensure better delineation and coordination of their respective mandates and associated activities.

Early and Safe Return-to-Work

16. That the *Workplace Health, Safety and Compensation Act* be amended to introduce a new mandatory cooperative return-to-work model as described in Appendix 6 of this report.

* Recommendation numbering coincides with the numbering in the Recommendations section of the main report.

Assessments

24. That the Department of Environment and Labour consult with the Department of Health and Community Services and the Commission with a view to bringing closure to the question of eligibility of self-employed home support workers for workers' compensation coverage.
27. That the current allowance for a disaster fund reserve be removed, with the need for such a fund to be left to the discretion of the Commission.

Entitlement

28. That the *Workplace Health, Safety and Compensation Act* be amended as follows:
 - (a) to include, under Section 60, specific reference to the benefit of doubt provision, with the provision to apply only when the evidence for or against a claim is equal in weight.
 - (b) to clarify that entitlement for benefits shall not include pre-existing conditions or non work-related injury.
 - (c) to provide specific authority for the Commission, with approval of the Lieutenant-Governor in Council, to make regulations dealing with chronic pain and occupational disease after appropriate consultations have first been held.

Benefits

29. That the *Workplace Health Safety and Compensation Act* be amended to repeal the requirement for a minimum level of compensation to injured workers, with the exception of surviving spouses.
30. That the *Workplace Health, Safety and Compensation Act* be amended to ensure that workers who are prohibited legislatively from exercising their right-to-refuse dangerous work under the *Occupational Health and Safety Act* be entitled to receive 100% of net earnings when injured in the line of active duty. The differential of 20% of net earnings above workers' compensation entitlement should be borne by the employer.
31. That the benefits to surviving spouses in the post-1985 group be fully reinstated, effective April 17, 1985 or the date of remarriage, whichever is later.
32. That the level of benefits to surviving spouses in the pre-1985 group be continued at their current levels.
33. That the *Workplace Health, Safety and Compensation Act* be amended with respect to injury recurrence to ensure that compensation is paid on the basis of earnings at the time of the recurrence.

Appeals

35. That the *Workplace Health, Safety and Compensation Act* be amended as follows:
- (a) That the Workers' Compensation Review Division (WCRD) be bound by *the Act*, Regulations and policies of the Commission and show appropriate deference to valid and reasonable decisions made by the Commission.
 - (b) That Review Commissioners not decide on reconsideration requests where they originally decided the matter.
 - (c) That the Commission be granted reconsideration where, in the opinion of the Commission, the Review Commissioner has not properly applied *the Act*, Regulations or Commission policy.
 - (d) That the current period of 90 days allowed to file an appeal with WCRD be reduced to 30 days. Reconsideration requests should also be limited to 30 days.
 - (e) That all requests for appeal be required to clearly state the grounds for the objection.
 - (f) That the 90-day time frame for decisions by WCRD be reduced to 60 days for hearings and 45 days if no hearings are involved.
 - (g) That the cases heard by WCRD be more evenly distributed among, and heard by, the regional Review Commissioners.
 - (h) That the complement of Review Commissioners be increased as needed to meet the new time lines for WCRD decisions.
 - (i) That Section 20 of *the Act*, which permits the Commission to hold internal appeal hearings, be repealed.
37. That pursuant to Section 27(1) of the *Workplace Health, Safety and Compensation Act*, WCRD develop appropriate rules of procedure and evidence to guide its activities, with such procedures to include specific requirements for regular training and information sessions on Commission policy and rules of administrative law.

Role of Government

45. That effective April 1, 2001, Government assume all costs associated with enforcement of the *Occupational Health and Safety Act* by the Department of Environment and Labour.
46. That any funds derived from prosecutions under *the Act* be deposited directly into the Workers' Compensation Injury Fund.
47. That the Department of Environment and Labour increase substantially its compliance monitoring and enforcement of the *Occupational Health and Safety Act*, that the number of inspectors be increased significantly, be aligned by industry/sector and trained accordingly.
48. That the Department of Environment and Labour enforce a zero tolerance policy for violations of the *Occupational Health and Safety Act*.

ACTION BY WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION

Prevention

1. That a provincial accident prevention strategy be developed on a priority basis, led by the Commission with the involvement of all key stakeholders.
5. That the Commission monitor health and safety committees and worker representatives to ensure that they have undertaken the legislated training and the meetings held are effective.
9. That the Commission strengthen the standards for workplace health and safety training by developing a strategic training program and a process for the setting of standards for training providers. Immediate priority be given to the development of a training protocol for occupational health and safety committees and worker representatives.
12. That the Commission aggressively launch both global and targeted education and awareness initiatives to ensure all stakeholders (i.e., workers, employers, unions, health care providers) fully understand their respective roles and responsibilities under both the *Occupational Health and Safety Act* and the *Workplace Health, Safety and Compensation Act* (including its administrative processes).
13. That the Commission and the relevant stakeholders pursue the establishment of sectoral committees, with a view to having several functioning within six months.
15. That the Commission and the Department of Environment and Labour ensure better delineation and coordination of their respective mandates and associated activities.

Health Care Provider Accountability

17. That the Commission pursue all appropriate measures to increase the accountability of health care providers in ensuring the appropriateness and timeliness of medical services provided to injured workers.
18. That the Commission embark upon further dialogue with the Department of Health and Community Services and groups such as acupuncturists and message therapists to explore ways and means by which such professions can be recognized by the Commission for health care purposes when appropriate.
19. That the Commission proceed immediately to revise the assessment rate classification system and implement the changes effective January 1, 2002.
20. That the Experience Rating System be amended to include surcharges of 40% beginning January 1, 2002, with the current discount of 20% to remain.
21. That the Commission investigate further the appropriateness of implementing a monthly payroll reporting system on a revenue neutral basis.
22. That the Commission conduct a detailed actuarial review of all self-insured employers with a view to pursuing that action which ultimately is in the financial best interest of the overall workers' compensation system.

23. That the Commission ensure the total administration fee for self-insured employers is sufficient to cover all relevant expenditures incurred in association with said claims.
25. That the Commission immediately examine any and all existing limited-life projects to ensure that assessment revenue is sufficient to cover their project-related claims.
26. That the Commission, in consultation with the Department of Justice, review the current legislation to ensure that the Commission has full flexibility to apply any assessment model it deems appropriate to minimize any financial risk associated with limited-life projects, with legislative amendments to be made as deemed appropriate.

Benefits

34. That the Commission embark upon a thorough review of the pension benefit provisions of the Act in consultation with appropriate stakeholders.

Appeals

36. That the Commission make the following amendments to its policies and procedures pertaining to internal appeals:
 - (a) That the period allowed to file an appeal internally on any matter be 30 days.
 - (b) That the internal review of appeals be limited to a paper file review.
 - (c) That the time line for decisions of internal review be reduced to 45 days from 90 days.

Administration

38. That the Board of Directors of the Commission ensure that the independent review of operations be conducted and concluded in a timely manner.
39. That the Commission review its Annual Report, with a view to improving the content, particularly the operational aspects of the Commission and sector-specific reporting.
40. That the Board of Directors of the Commission engage in more open dialogue with its key stakeholders through regular forums.

Enforcement by Commission

41. That the Commission's policy of zero tolerance for system abuse and fraud be aggressively enforced.
42. That the Commission immediately take measures to increase the quality and frequency of investigations to catch and prosecute all abusers of the system.
43. That the Commission take immediate steps to improve and promote a reporting hotline.
44. That the Commission, in concert with the Department of Justice, review the fine and penalty provisions of the *Workplace Health, Safety and Compensation Act* on a priority basis to ensure they are sufficient to act as a deterrent.

